

No. 14945

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United States  
Court of Appeals  
for the Ninth Circuit

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WILLIAM ALFRED LUCKING,

Appellant,

vs.

OJAI MUTUAL WATER COMPANY, a Corporation,  
and THE OJAI VALLEY COMPANY, a Corporation,

Appellees.

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Transcript of Record  
In Two Volumes

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Volume I  
(Pages 1 to 136)

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

MAY 18 1956

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## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer .....	56
Attorneys, Names and Addresses of.....	1
Amended Reply to Request for Admissions.....	105
Certificate by Clerk.....	131
Complaint, First Amended.....	3
Ex. A—Articles of Incorporation of Ojai Mutual Water Co. ....	26
B—Certificate of Amendment of Articles of Incorporation of Ojai Mutual Water Co. ....	34
C—Articles of Incorporation of The Ojai Valley Co. ....	41
D—Certificate of Amendment to Articles of Incorporation of The Ojai Valley Co. ....	48
E—Description of Land.....	51
F—Description of Land.....	51
G—Description of Land.....	52
Findings of Fact and Conclusions of Law.....	120

INDEX	PAGE
Judgment Barring Taking of Further Evidence and Dismissal of Complaint.....	125
Judgment Relative to Amendment to Articles of Incorporation, Etc. ....	123
Minutes of the Court March 10, 1954.....	120
Notice of Appeal.....	128
Notice of Motion to Dismiss.....	55
Request for Admission .....	83
Ex. E—Letter Dated September 29, 1948.....	91
F—Letter Dated October 4, 1948.....	94
G—Letter Dated May 24, 1949.....	95
H—Letter Dated May 27, 1949.....	98
I—Letter Dated April 27, 1950.....	99
J—Letter Dated May 3, 1950.....	102
K—Letter Dated May 24, 1950.....	103
Statement of Points on Appeal, Appellant's (U.S.D.C.) .....	129
Statement of Points and Designation of Record, Appellant's, Adoption of (U.S.C.A.).....	134
Stipulation for Consolidation of Actions for Printing, Briefing and Hearing.....	135
Order Re .....	136

## INDEX

## PAGE

Transcript of Proceedings.....	137
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## Witnesses:

Butler, Dr. Charles T.

—direct .....246

—cross .....254

Harmon, Rawson B.

—direct .....217, 227, 256

—cross .....258

Jackson, Mrs. Eldred

—direct .....228

Lucking, William Alfred

—direct .....210

Wilcox, Charles Justus

—direct .....188, 209





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In the District Court of the United States for the  
Southern District of California, Central Division

No. 13197-HW

WILLIAM ALFRED LUCKING,

Plaintiff,

vs.

OJAI MUTUAL WATER COMPANY, a Corporation,  
and THE OJAI VALLEY COMPANY,  
a Corporation,

Defendants.

### FIRST AMENDED COMPLAINT

Action for Cancellation of Mutual Water Company  
Control Shares of Stock, and for Further Relief

Plaintiff by stipulation files this his First Amended Complaint, and complains on behalf of himself and on behalf of all other stockholders of Ojai Mutual Water Company, a California Corporation, and for cause of action alleges:

#### I.

That the question which is the subject of this action is one of common and general interest to all of the holders of the capital stock of Defendant Ojai Mutual Water Company, a California Corporation, and common questions of law and fact are involved affecting the rights of said stockholders of Ojai Mutual Water Company; that the holders of

said capital stock are so numerous as to make it impracticable to bring them all before the Court. [2\*]

## II.

Plaintiff is a citizen of the County of Washtenaw in the State of Michigan, and is of full age and is the owner of upwards of One Hundred (100) shares of the capital stock of the Ojai Mutual Water Company.

## III.

(a) Defendant Ojai Mutual Water Company is a corporation duly organized and existing under the laws of the State of California and was incorporated in May, 1920, for the purpose of owning water and water rights in Ojai and vicinity, in Ventura County, and to deliver water to its stockholders only for their exclusive use upon lands owned by them within certain District boundaries.

A copy of the Articles of Incorporation of said Company is attached hereto as Exhibit "A," reference to which is hereby made.

A copy of a Certificate of Amendment to said Articles of Incorporation, dated July 12, 1935, and filed in the office of the Secretary of State on September 2, 1935, is attached hereto as Exhibit "B," reference to which is hereby made.

(b) Defendant, The Ojai Valley Company, is a corporation duly organized and existing under the laws of the State of Ohio, having been incorporated

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**\*Page numbering appearing at foot of page of original Certified Transcript of Record.**

therein on or about the 4th day of September, 1922, and said The Ojai Valley Company was duly admitted to transact business within the State of California, and in particular Ventura County, and has for the last twenty (20) years and upwards been the owner of certain valuable residential and agricultural properties in a district lying west of Foothills Road and south of Fairview Road, within the Ojai Valley, and originally comprising a total of approximately five hundred (500) acres; the greater part of this district being known as Arbolada and West Hills tracts; and that, upon information and belief, Defendant, The Ojai Valley Company, is now wholly owned by the Trustees of the Edward D. Libbey [3] Estate, and was wholly owned by said Edward D. Libbey and his immediate family from time of incorporation till said Mr. Libbey's death.

Copies of the Articles of Incorporation and Certificate of Amendment thereof, of said The Ojai Valley Company, are attached hereto, marked Exhibits "C" and "D," respectively, reference to which is hereby made.

(c) The interests and rights forming the subject matter in controversy exceeds, exclusive of interests and costs, the value of Three Thousand Dollars (\$3,000.00), namely One Hundred Thousand Dollars (\$100,000.00) and upwards, and also involve land and interests in land in Ventura County and within the jurisdiction of this Court.

## IV.

That on or about January 11, 1928, plaintiff purchased on land contract from Florence Scott Libbey, a widow, fifteen acres more or less, lying west of Del Norte Road and north of property owned by defendant The Ojai Valley Company and situated in said Ojai Valley, for the sum of Thirty Thousand Dollars (\$30,000.00), and which contract was modified on February 9, 1928, so as to cover 15.988 acres at the same price of Two Thousand Dollars (\$2,000.00) per acre, a description of which land is attached hereto, marked Exhibit "E," reference to which is hereby made.

It was a part of said contract of purchase and sale that, upon completion of the payments therein specified, plaintiff should receive thirty-two (32) shares of said defendant Ojai Mutual Water Company's capital stock, as fully paid, and which thirty-two (32) shares were afterwards, upon completion of said contract, issued and delivered to plaintiff by Certificates for said shares.

## V.

That on or about September 26, 1930, plaintiff purchased on land contract from Florence Scott Libbey, a widow, 33.322 acres [4] more or less, of land adjoining said first purchased land, as set forth in paragraph IV hereof, for a total purchase price of Twenty-five Thousand Dollars (\$25,000.00), payable on or before January 1, 1935, as specified.

It was a condition of said last mentioned contract



that seller, upon the execution of the contract and the final payments therein specified, should deliver to plaintiff as buyer "free of charge ninety-nine (99) shares of the capital stock, fully paid, of the Ojai Mutual Water Company."

That on or about the 13th day of November, 1940, plaintiff completed said payments of \$25,000.00 and received a grant deed from defendant, The Ojai Valley Company, grantee of said vendor and seller, Florence Scott Libbey, of said 33.322 acres, which was duly recorded on September 29, 1942, in Volume 661 of Official Records, page 373 of Ventura County, and at the same time there was delivered to plaintiff Certificate No. 112, dated September 26, 1930, for said 99 shares of the capital stock of said defendant, Ojai Mutual Water Company. A description of said land is attached hereto and marked Exhibit "F," reference to which is hereby made.

## VI.

That at the time of making the aforesaid purchases plaintiff had no knowledge of the contents of the Articles of Incorporation, Exhibit "A," or of the Amendment thereto, dated July 12, 1935, Exhibit "B."

## VII.

(a) That on or about May 21, 1945, plaintiff purchased on land contract from defendant, The Ojai Valley Company, 20.82 acres more or less, bounded by Del Norte and Fairview Roads and Foothills Road in said Ojai Valley, and adjoining said two previous purchases, for the sum of Fifteen Thou-

sand Dollars (\$15,000.00), payable before May 1, 1952, which transaction was completed by the making of said payments on or about the 10th day of June, 1950, at [5] which time plaintiff received a Grant Deed for said land and recorded it June 30, 1950, in Book 938, of Official Records, page 369, of Ventura County, California, a description of which land is attached hereto and marked Exhibit "G," reference to which is hereby made.

(b) In the negotiations leading up to the making of said contract of May 21, 1945, the plaintiff requested that as a part of the said transaction he receive four shares per acre of defendant Ojai Mutual Water Company's capital stock; C. J. Wilcox of Toledo, Ohio, the chief executive officer of both defendants, refused to grant this request on the ground that said shares of capital stock would make the purchase price of this property on entirely too low a basis; and on or about June 12, 1945, plaintiff received as a part of said last mentioned purchase, Certificate No. 195 for twenty shares of said Ojai Mutual Water Company capital stock.

### VIII.

In summary, plaintiff further shows that said first and second transactions were made and entered into at a time prior to July 12, 1935, when said Amendment to the Articles of Incorporation of said defendant Ojai Mutual Water Company was filed, being Exhibit "B."

That said amendment reduced the requisite num-



ber of shares of said Ojai Mutual Water Company which should be assigned or allocated to each one acre of land to be owned by the stockholders of said Ojai Mutual Water Company, which Amendment thus substituted "One share per acre" for the previous requirement of the original Articles of Incorporation of "four shares per acre" as provided for by Exhibit "A."

That of the stockholders meeting of said defendant, Ojai Mutual Water Company, at which this Amendment, Exhibit "B," was authorized, plaintiff received no notice of said intended Amendment [6] to said Articles of Incorporation as required by law; and upon information, no such notice of said intended Amendment was given as required by law.

## IX.

That at no time during the entire period of the incorporation of said Ojai Mutual Water Company did the said The Ojai Valley Company or any person acting for the Libbey interests, so-called, own or intend to acquire (or intend should be served by said Ojai Mutual Water Company's facilities) more than approximately five hundred (500) acres, and all lying within the said Arbolada and West Hills tracts, as aforesaid, or immediately adjacent thereto.

## X.

(a) That throughout the years from 1922 on down through 1948, the said The Ojai Valley Company and the Libbey interests had sold for residence purposes a total of approximately three hundred

(300) acres, and upon which had been erected, by the respective purchasers, residences of the total value of upwards of \$1,500,000.00, thus leaving in the ownership of defendant, The Ojai Valley Company, of record, an unnecessary excess or surplus of about thirteen hundred (1,300) shares of said Ojai Mutual Water Company's issued and outstanding stock.

(b) That at no time prior to the spring of 1948, did plaintiff learn of the substance or existence of Exhibit "B" or of the facts stated in paragraph X(a) above.

#### XI.

That said two defendants had always treated all purchasers of land in said Water District from the said Libbey interests and said The Ojai Valley Company as eligible for water, without complying with the formalities required by the Articles and Bylaws of defendant Ojai Mutual Water Company.

Further, upon information, that at all times since the incorporation of said Ojai Mutual Water Company in 1922, there has been [7] in the ownership of said The Ojai Valley Company sufficient Ojai Mutual Water Company shares to have allowed to the said purchasers of said subdivision lots or land, a ratio of four (4) shares for each acre thereof purchased, as required by the original Articles of Incorporation of said Water Company, Exhibit "A."

#### XII.

That upon information and belief the entire cost of all the plant and equipment and property of said

Ojai Mutual Water Company has been fully paid for from time to time by water dues collected by said Ojai Mutual Water Company while in the control of said The Ojai Valley Company or of the Libbey interests so-called, on account of any cost of said Ojai Mutual Water Company's wells, mains, pumps and other facilities, all of which have been paid for fully from said water dues.

And further, upon information, that never during the times complained of herein have any of the said 1500 shares more or less held in the name, of record, of defendant The Ojai Valley Company, contributed any sums of money whatsoever by way of assessments or water dues, for the payment of the afore-said facilities, for the reason that there has never been a stock assessment against the holders of shares of defendant Ojai Mutual Water Company and for the further reason that no water has ever been used for, by or in connection with any of said 1500 shares more or less.

### XIII.

That at the present time the defendant, The Ojai Valley Company, which still holds said surplus of 1300 shares, more or less, of Ojai Mutual Water Company stock, has no unsold land eligible to acquire said surplus shares or to receive water there-upon from the defendant Ojai Mutual Water Company.

### XIV.

That said surplus of 1300 shares, more or less, entitles the defendant, The Ojai Valley Company, to

one vote per share for directors [8] of said Ojai Mutual Water Company and thus constitutes control of said Ojai Mutual Water Company.

#### XV.

That said defendant Ojai Mutual Water Company's facilities constitute the only adequate and sufficient source of water to the stockholders thereof who are the grantees of defendant The Ojai Valley Company and the Libbey interests, so-called, and said water supply is necessary to said shareholders and water users in general, and to this plaintiff in particular, to maintain their homes and lands and the value thereof.

#### XVI.

That the water supply in the Ojai Valley generally, and in the so-called basin from which defendant, Ojai Mutual Water Company, receives its water, is critically short; that on or about June 1, 1951, the static water levels of the defendant Ojai Mutual Water Company's wells were about 100% lower than they were three years ago, and the same percentage applies to the present draw-down levels in said wells; that there is not sufficient water available to defendant Ojai Mutual Water Company to permit extension of its water distribution in any manner whatsoever, without seriously diminishing the amounts of water presently being supplied to its shareholders.

That, upon information, defendant, Ojai Mutual Water Company, has declared it to be advisable and

necessary to attempt to drill a new well because of said critical water shortage.

### XVII.

Upon information, plaintiff shows that the entire cost to said Libbey interests as promoters of said The Ojai Valley Company and Ojai Mutual Water Company, for all the property, plant and facilities of said Ojai Mutual Water Company—does not exceed One Hundred Thousand Dollars (\$100,000.00), or approximately \$50.00 per share, and that the same has been fully paid back, as aforesaid, by [9] sales of shares of said Ojai Mutual Water Company and sales of said 300 acres more or less.

### XVIII.

That defendant, The Ojai Valley Company, has offered to sell and threatens to sell all of its approximately 1500 shares of Ojai Mutual Water Company stock, at a price greatly in excess of said \$50.00 per share;

That this represents an excessive and unwarranted profit to the promoters of the said Ojai Mutual Water Company.

### XIX.

That in April, 1950, plaintiff demanded of C. J. Wilcox (the chief executive officer of both defendants and of the Trustees of the Estate of Edward D. Libbey) that he have said balance of 1300 shares more or less of Ojai Mutual Water Company stock



cancelled or put in trust for the individual owners of land who were then shareholders and users of said Ojai Mutual Water Company water and to protect the valuable investments of said owners, and pointed out to said C. J. Wilcox that said owners would suffer serious injury and loss if at any time said 1300 shares, more or less, of Ojai Mutual Water Company stock were sold or transferred by defendant, The Ojai Valley Company, for any purpose or to any person or corporation whatever;

To which statements and demands so made by plaintiff, said C. J. Wilcox replied that he had not made up his mind about the final use or disposition of said balance of 1300 shares more or less of Ojai Mutual Water Company stock, and said C. J. Wilcox has refused and neglected to act on said demands of plaintiff.

## XX.

That plaintiff has purchased upwards of Fifty Thousand Dollars (\$50,000.00) of the property of said Libbey interests so-called and of defendant, The Ojai Valley Company, in said Ojai Valley and expended upwards of a similar sum in improvements thereon—and that [10] plaintiff has now a real substantial interest in safeguarding said investments, and his own and all other individual owners of said Water Company shares who are grantees of lands from said The Ojai Valley Company and Libbey interests so-called.

And for a Second and Separate Cause of Action,  
Plaintiff Alleges:

I.

Plaintiff repleads all of the allegations contained in Paragraphs I to XX, inclusive, of the first cause of action, to which reference is hereby made, and the same are hereby incorporated and referred to in this second cause of action and made a part hereof as though the same were again fully set forth.

II.

That the officers and agents of both defendant corporations did, by their declarations to proposed purchasers of lands from defendant The Ojai Valley Company and the Libbey interests, and by acts evincing to said proposed purchasers an intention to that effect, hold out that the water to be supplied by defendant Ojai Mutual Water Company would be used solely for the benefit of the lands then held and to be transferred by defendant The Ojai Valley Company and the Libbey interests; that in pursuance of this intention and purpose the defendant Ojai Mutual Water Company constructed a water distribution system extending to said lands originally owned by defendant The Ojai Valley Company and the Libbey interests, and that defendant The Ojai Valley Company obtained purchasers, including this plaintiff, for said lands on the faith of such intention and purpose. That plaintiff has, at all times, done and performed all of the conditions and agreements to be performed on his part at the time and in the manner required.

## III.

Further, that said officers and agents, by their declarations [11] to plaintiff and by their acts evincing to plaintiff an intention to that effect, held out and implied that control of defendant Ojai Mutual Water Company would ultimately rest effectively in the grantees of defendant The Ojai Valley Company and of the Libbey interests who were shareholders of said Water Company and users of the water supplied by said Water Company's facilities.

## IV.

That by reason of said invalid 1935 Amendment to the Articles of Incorporation of defendant Ojai Mutual Water Company, the interest in water represented by each share of said Water Company was proportionately diminished, because more shares of said Ojai Mutual Water Company were available for lands other than those for which originally intended and as held out to purchasers as aforesaid. That by reason of the foregoing plaintiff and the other grantees of said The Ojai Valley Company and the Libbey interests, so-called, who are shareholders and users of defendant Ojai Mutual Water Company water, have been deprived of control of said Water Company.

## V.

That the failure and refusal of the officers and directors of both of defendant corporations to act upon plaintiff's demands, as aforesaid, constitutes a repudiation of the understanding and agreement between plaintiff and defendant corporations as hereinabove set forth.



## VI.

That by reason of the foregoing, plaintiff and the other users of defendant Ojai Mutual Water Company water have been injured as aforesaid, and greater injury is threatened by future transfer of said 1300 surplus shares to any person or corporation whatsoever, all of which injury is irreparable and cannot be properly compensated for by monetary damages.

And for a Third and Separate Cause of Action,  
Plaintiff Alleges: [12]

## I.

Plaintiff repleads all of the allegations contained in Paragraphs I to XX, inclusive, of the first cause of action, to which reference is hereby made, and the same are hereby incorporated and referred to in this third cause of action and made a part hereof as though the same were again fully set forth.

## II.

That by reason of the actions of defendant Ojai Mutual Water Company and the invalid 1935 Amendment to its Articles of Incorporation, corporate acts done by defendant Ojai Mutual Water Company pursuant to the provisions of said 1935 Amendment to its Articles of Incorporation have been and are ultra vires and void.

## III.

That by reason of the foregoing, plaintiff and the other users of defendant Ojai Mutual Water Com-

pany water have been injured as aforesaid, and greater injury is threatened by future transfer of said 1300 surplus shares to any person or corporation whatsoever, all of which injury is irreparable and cannot be properly compensated for by monetary damages.

And for a Fourth and Separate Cause of Action,  
Plaintiff Alleges:

I.

Plaintiff repleads all of the allegations contained in Paragraphs I to XX, inclusive, of the first cause of action, together with Paragraphs II and III of the second cause of action, to which reference is hereby made, and the same are hereby incorporated and referred to in this fourth cause of action and made a part hereof as though the same were again fully set forth.

II.

That defendant, The Ojai Valley Company (wholly owned by the Libbey interests so-called who were the promoters of both defendants), [13] holds said 1300 shares of Ojai Mutual Water Company stock as trustee for the benefit of the grantees of lands originally owned, as aforesaid, by the defendant, The Ojai Valley Company, and the Libbey interests.

III.

That the threatened receipt by defendant, The Ojai Valley Company, of unwarranted and unjustified profit from sale of said 1300 surplus shares of defendant Ojai Mutual Water Company, and the

threatened and actual diminution of the water rights of plaintiff and other shareholders similarly situated constitutes a breach of said trust.

#### IV.

That by reason of the foregoing, plaintiff and the other users of defendant Ojai Mutual Water Company water have been injured as aforesaid, and greater injury is threatened by future transfer of said 1300 surplus shares to any person or corporation whatsoever, all of which injury is irreparable and cannot be properly compensated for by monetary damages.

And for a Fifth and Separate Cause of Action,  
Plaintiff Alleges:

#### I.

Plaintiff repleads all of the allegations contained in Paragraphs I to XX, inclusive, of the first cause of action, to which reference is hereby made, and the same are hereby incorporated and referred to in this fifth cause of action and made a part hereof as though the same were again fully set forth.

#### II.

That none of the present users of water supplied by defendant, Ojai Mutual Water Company, is an overlying owner; that water is imported by said Water Company upwards of two miles from the Ojai Valley basin, so-called, an underground source; that there are [14] numerous other users of water from said basin; that said Ojai Valley basin, so-

called, is now seriously depleted and overdrawn, and there is insufficient water therein for any extension of water use over what is presently being withdrawn therefrom; that all water rights acquired in connection with use of Ojai Mutual Water Company water have been acquired by plaintiff and the shareholders of said Water Company who have made actual beneficial use of said water; that all pipelines, wells and other facilities of defendant, Ojai Mutual Water Company, have been paid for by shareholders who have actually used said water; that none of said 1500 shares of said defendant, Ojai Mutual Water Company, now of record in the name of defendant, The Ojai Valley Company, has by beneficial use or otherwise acquired any water rights whatsoever by appropriation; that this water right, as aforesaid, is real property.

### III.

That by reason of the critical water shortage, as aforesaid, the defendant, Ojai Mutual Water Company, is able adequately to supply only the present users of water in the maintenance and upkeep of their homes and lands, and there is insufficient water to extend the services of the defendant, Ojai Mutual Water Company, in any manner whatsoever.

### IV.

That the threatened diversion and dilution of water interests of the present users of water who are shareholders of defendant, Ojai Mutual Water Company, and grantees of defendant, The Ojai Val-

ley Company and the Libbey interests, would cause great and irreparable injury to plaintiff and to all shareholders similarly situated for which there is no adequate remedy at law.

And for a Sixth and Separate Cause of Action,  
Plaintiff Alleges: [15]

I.

Plaintiff repleads all of the allegations contained in Paragraphs I to XX, inclusive, of the first cause of action, together with Paragraphs II and III of the fifth cause of action, to which reference is hereby made, and the same are hereby incorporated and referred to in this sixth cause of action and made a part hereof as though the same were again fully set forth.

II.

That at all times complained of herein, as between The Ojai Valley Company, the shareholders of defendant Ojai Mutual Water Company who are grantees of defendant The Ojai Valley Company and Libbey interests, and the Ojai Mutual Water Company itself, said shares were and are treated as appurtenant to the land granted to said shareholders by defendant The Ojai Valley Company, and Libbey interests, by the acts and declarations of defendants Ojai Mutual Water Company and The Ojai Valley Company.

III.

That by reason of the foregoing, said surplus 1300 shares, more or less, presently of record in



the name of defendant The Ojai Valley Company, have improperly and in violation of the declarations and acts evincing such declarations, been treated and held as personalty.

#### IV.

That by reason of this aforesaid 1300 shares being treated by defendant The Ojai Valley Company as personalty and thus freely transferable, and by reason of said threatened sale of said 1300 shares, plaintiff and those shareholders of defendant Ojai Mutual Water Company who are similarly situated would suffer irreparable injury which cannot adequately be compensated for by monetary damages.

And for a Seventh and Separate Cause of Action, Plaintiff Alleges: [16]

#### I.

Plaintiff repleads all of the allegations contained in Paragraphs I to XX, inclusive, of the first cause of action, Paragraphs II, III and IV of the second cause of action, Paragraphs II and III of the fourth cause of action, Paragraphs II and III of the fifth cause of action, and Paragraphs II and III of the sixth cause of action, to which reference is hereby made, and the same are hereby incorporated and referred to in this seventh cause of action and made a part hereof as though the same were again fully set forth.

#### II.

That an actual controversy exists by reason of the foregoing, in that plaintiff claims that defendant

The Ojai Valley Company has no right to own, vote, or sell said surplus 1300 shares of defendant Ojai Mutual Water Company, and defendant The Ojai Valley Company does so claim such rights and does so vote said shares and does threaten to sell said shares, all to the irreparable injury of plaintiff and those shareholders of defendant Ojai Mutual Water Company who are users of said water and who are grantees of defendant The Ojai Valley Company and the Libbey interests so-called.

Wherefore, the plaintiff prays judgment:

(1) That the defendant The Ojai Valley Company be enjoined and restrained, during the pendency of the above-entitled action and until its final determination, or until the Court shall otherwise order, from selling or in any manner transferring or becoming obligated to transfer, any share or shares of stock in the Ojai Mutual Water Company, a California corporation, except as herein provided, to wit: shares may be so transferred to owners of record of land within the boundaries of that area to be served by said Ojai Mutual Water Company as now set forth in the Articles of Incorporation of said Ojai Mutual Water Company, as amended, on file in the Office of the County Clerk, County of Ventura, State of [17] California, and which land is now owned by the said The Ojai Valley Company and does not exceed two hundred (200) acres; and the number of shares which may be transferred shall not exceed two hundred (200) shares, that is to say, shall not exceed one (1) share

per acre of such land now owned by said defendant, which now totals about two hundred (200) acres, and which said defendant is now offering for sale to the public.

(2) That the defendant The Ojai Valley Company be enjoined and restrained, during the pendency of the above-entitled action and until its final determination, or until the Court shall otherwise order, from voting more than one share of the stock of the Ojai Mutual Water Company for every acre of land now owned and held by said defendant The Ojai Valley Company, and which unsold land does not exceed two hundred (200) acres.

(3) That the defendant The Ojai Valley Company be forever enjoined and restrained from voting more than one share of the stock of the Ojai Mutual Water Company for every acre of land then owned by said defendant The Ojai Valley Company at time for said voting.

(4) That defendant The Ojai Valley Company deliver up thirteen hundred (1300) shares of the stock of the Ojai Mutual Water Company to the officers of said Ojai Mutual Water Company for retirement of said shares, said shares to be held as authorized but unissued shares of said Ojai Mutual Water Company; or

(5) That defendant The Ojai Valley Company deliver up for cancellation said thirteen hundred (1300) shares of the stock of the Ojai Mutual Water Company; or



(6) That the defendant The Ojai Valley Company be ordered to distribute said thirteen hundred (1300) shares of said capital stock of said defendant Water Company pro rata on an acreage basis to present holders of record shares of said capital stock of said defendant Ojai Mutual Water Company, and which owners of said [18] shares are now owners of lands granted to them by The Ojai Valley Company and Libbey interests and which are within the boundaries of the area to be served by said Ojai Mutual Water Company as now set forth in the Articles of Incorporation of said Ojai Mutual Water Company, as amended, and on file in the office of the County Clerk, County of Ventura, State of California, and are attached to this complaint and marked Exhibits "A" and "B" thereof.

(7) That it be adjudged that the record holder of said thirteen hundred (1300) shares of said Ojai Mutual Water Company, namely defendant The Ojai Valley Company, has no right to make a profit of any kind or nature of or from said thirteen hundred (1300) shares of the said Ojai Mutual Water Company.

(8) That this Court take an account of any moneys owing for said Ojai Mutual Water Company's plant—and if a balance in favor of said The Ojai Valley Company is found, that its payment be provided for in some equitable manner, which leaves control of said Ojai Mutual Water Company in the grantees of defendant The Ojai Valley Company and the said Libbey interests.

(9) Or in the alternative, that a declaratory judgment be entered declaring and adjudicating the respective rights and duties of plaintiffs and both defendants in the premises, and declaring and determining that defendant The Ojai Valley Company is not entitled to vote, sell, or make a profit of any kind or nature of or from said surplus 1300 shares of said Ojai Mutual Water Company.

(10) For costs of suit, and for such other and further relief as to the Court may seem just in the premises.

Dated October 30, 1951.

JOHNSTON & LUCKING,

By /s/ WM. A. LUCKING, JR.,

Attorneys for Plaintiff. [19]

### EXHIBIT "A"

#### Articles of Incorporation of Ojai Mutual Water Company

Know All Men by These Presents:

That we, the undersigned, the majority of whom are citizens and residents of the State of California, have voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California;

And We Do Hereby Certify:

First: That the name of said corporation is Ojai Mutual Water Company;

Second: That the purposes for which it is formed are: To acquire, hold, manage and control water and water rights and water bearing lands in Ojai and vicinity in Ventura County, California, together with such personal and other real property, easements, and appurtenances as may be necessary or convenient to carry out the purposes or objects of the company and to deliver said water to its stockholders only for their exclusive use upon lands owned by them or in their lawful possession, situate, lying and being within the exterior boundaries of the following described property:

Situate, lying and being in the County of Ventura, State of California, and described as:

A part of Lots six (6), seven (7), and eight (8), ten (10), thirteen (13), fourteen (14), and fifteen (15), as the same is designated and delineated upon that certain map entitled "The Bard Subdivision of the Rancho Ojai, Tracts as surveyed by Thomas H. Bard, 1867-1870, Ventura County, Cal.," as recorded in the office of the County Recorder of said Ventura County in Book 5 of Miscellaneous Records, (Maps), at page numbered 25½ and all of Sections one (1), two (2), and three (3) Township Four (4) North, Range twenty-three (23) West, San [20] Bernardino base and meridian as the same is designated and delineated upon the official plat

of the survey of said lands returned to the general land office by the Surveyor-General, and particularly described as an entirety as follows:

Beginning at a point in Line No. 12 of the final survey of said Rancho Ojai district south  $70^{\circ}$  West 44.43 chains from a live oak marked "0.20" standing at Sta. No. 12 of the final survey of said Rancho Ojai, said point of beginning being the northwest corner of lands of James C. Daly; thence from said point of beginning,

1st:—South along the west line of said lands of James C. Daly and along the west line of lands of Hattie G. Cota to a point in the center line of that certain public road 60.00 feet wide locally known as and called Ojai Avenue; thence along same,

2nd:—South  $84^{\circ} 15'$  west to a point in the center line of that certain public street in the town of Nordhoff, locally known as and called "Montgomery Street"; thence,

3rd:—Southerly along the center line of said Montgomery Street, that certain public street 60.00 feet wide in the town of Nordhoff, locally known as and called "Live Oak Street," and along the center line of that certain public road 60.00 feet wide locally known as and called "Creek Road" following the meander of said streets and road to a point in the center line of that certain creek, locally known as and called "Arroyo San Antonia," thence

4th:—Southwesterly along the general course of the center line of said Arroyo San Antonio follow-

ing its meanders to a point in the easterly line of that certain parcel of land subdivided into lots and streets as the same is designated and delineated upon that certain map entitled "Subdivision of lands of Ojai Land Company, being a part of Rancho Ojai, Ventura County, California," as recorded in the office of the County Recorder of said Ventura County in Book 3 of Miscellaneous Records (Maps), at page 42, thence

5th:—North  $30^{\circ} 30'$  West along the easterly line of said "Ojai Land Company Subdivision" to the southeast corner of lands of Elise Meiners, et al., thence

6th:—North  $15^{\circ} 54'$  east along the east line of said lands of Elise Meiners, et al. and along the west line of lands of William Kerfoot, Tonie Grant, K. P. Grant, and Edward D. Libbey, to a point in the north line of that certain public road locally known as and called "Matilija Road," thence,

7th:—Northwesterly along the northerly line of said [21] Matilija Road to a point in line No. 13 of the final survey of said Rancho Ojai; thence along same,

8th:—North  $87^{\circ}$  west to the corner common to Sections three (3) and four (4), Township four (4) North, range twenty-three (23) West of the San Bernardino base meridian; thence

9th:—North to the corner common to said Sections three (3) and four (4), Township four (4) North, Range twenty-three (23) and sections thirty-



three (33) and thirty-four (34), Township five (5) North, Range twenty-three (23) West, San Bernardino base meridian; thence

10th:—East along the township line between township four (4) North, Range twenty-three (23) West of the San Bernardino base meridian, and Township Five (5) North, range twenty-three (23) West of the San Bernardino base meridian to a point in Line No. 12 of the final survey of said Rancho Ojai; thence along same

11th:—North  $70^{\circ}$  East to the point of beginning. Provided that any stockholder desiring to use and using said water shall be the owner of one share of the capital stock of the company for each one-quarter acre of land or fraction thereof, to which said water is to be delivered for use thereon, situated within the exterior limits of the above-described property and that such land to which said water is to be delivered for use thereon shall first have been designated and listed by the company as susceptible to the use of said water by the company in such manner as the Bylaws of the company may determine. Mere ownership of stock in said company or of land situated within the above-described limits shall not entitle a stockholder to any water whatever, unless he and his land shall be otherwise eligible.

This company is not authorized to engage in the business of selling, dealing in or distributing said or any water for profit, or for compensation, or as

a public service corporation, and none of its waters shall ever be for sale, rental or distribution, and for the delivery of said water to them by said company said stockholders shall pay only such an amount as may be sufficient to pay the cost of management, maintenance and operation of [22] the company and for the delivery of said water to them.

The Company shall deliver said water fairly, impartially and equitably among and to its qualified stockholders desiring said water, so long as they shall observe the rules and regulations defined in the Bylaws of the company and prescribed by the board of directors for the use and delivery of said water, and said company is hereby authorized and empowered to prescribe by appropriate Bylaws, all needful rules and regulations for the fair and equitable delivery of said water.

The company shall have power to borrow money and secure the same by mortgage or other appropriate form of security.

To purchase, or otherwise acquire, own, hold, mortgage, pledge, sell and dispose of debts, dues, demands or choses in action, public bonds or stocks, and bonds and shares of capital stock of any corporation or corporations, including membership in non-capital stock corporations and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

Third: That the place where the principle business of this corporation is to be transacted is Ojai, Ventura County, California;

Fourth: That the term for which said corporation is to exist is fifty years from and after the date of its incorporation;

Fifth: That the number of directors of said corporation shall be three and the names and places of residence of the directors who are appointed for the first year and to serve until the election and qualification of such officers, are as follows:

Names	Whose Residence is at:
Edward D. Libbey	Toledo, Ohio
Frank Mead	Ojai, California
H. T. Sinclair	Ojai, California

Sixth: That the amount of the capital stock of said [23] corporation is \$150,000.00 and the number of shares into which it is divided is 3000 shares of the par value of \$50.00;

Seventh: That the amount of the capital stock which has been subscribed is \$150,000.00, and the following are the names of the persons by whom the same has been subscribed, to wit:

Names of Subscribers	Number of Shares	& Amount
Edward D. Libbey .....	1	\$50.00
Frank Mead .....	1	\$50.00
H. T. Sinclair .....	1	\$50.00

In Witness Whereof, we have hereunto set our hands and seals this 8th day of April, 1920.

EDWARD D. LIBBEY,

FRANK MEAD,

H. T. SINCLAIR.



State of California,  
County of Ventura—ss.

On this 8th day of April, 1920, before me, John J. Burke, a Notary Public in and for the County of Ventura, State of California, personally appeared Edward D. Libbey, Frank Mead, and H. T. Sinclair, known to me to be the persons whose names are subscribed to the within instrument, and severally acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 8th day of April, 1920.

[Seal]                      JOHN J. BURKE,  
Notary Public in and for the County of Ventura,  
State of California. [24]

Original

958

Articles of Incorporation  
of  
Ojai Mutual Water Company

Filed May 22, 1920

L. E. Hallowell, Clerk

Robert M. Clarke

918 Merchants National Bank  
Building  
Los Angeles, California [25]

## EXHIBIT "B"

958

Frank C. Jordan,  
Secretary of State.

Robert V. Jordan,  
Assistant Secretary of State.

Frank H. Cory,  
Charles J. Hagerty,  
Deputies.

State of California, Department of State

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy thereof. I further certify that this authentication is in due form and by the proper officer.

In Witness Whereof, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 28th day of September, 1935.

[Seal]

FRANK C. JORDAN,  
Secretary of State;

By CHARLES J. HAGGERTY,  
Deputy.

Filed: Sept. 30, 1935. L. E. Hallowell, Clerk; By Irene Van Fossen, Deputy Clerk. [26]

Certificate of Amendment of Articles of Incorporation of Ojai Mutual Water Company a Corporation

The undersigned, H. T. Sinclair and Douglas E. Burns, do hereby certify that they are, respectively, and have been at all times herein mentioned, the duly elected and acting Vice President and Secretary of Ojai Mutual Water Company, a California corporation, and further, that

One: At a regular meeting of the Board of Directors of said corporation duly held at its principal office for the transaction of business at Ojai, California, at 2:30 o'clock p.m. on the 4th day of March, 1935, at which meeting there was at all times present and acting a quorum of the members of said Board, the following resolution was duly adopted:

“Resolution on Amendment of Articles  
of Incorporation

“Whereas, it is deemed by the Board of Directors of this corporation to be to its best interests and to the best interests of its shareholders that its Articles of Incorporation be amended to provide that any stockholder desiring to use and using water of the corporation shall be the owner of at least one share of the capital stock of the corporation for each acre of land or fraction thereof, to which said water is to be delivered for use thereon instead of one share for each one-quarter acre of land or fraction thereof, and

“Whereas, it appears to the Board that at the regular annual meeting of the stockholders of the

corporation this day held, at which meeting 1740 shares of the corporation were duly represented out of a total of 2,003 shares of such stock issued and outstanding, a resolution was unanimously adopted by which such Amendment was adopted and approved by the stockholders of the corporation.

“Now Therefore, Be It Resolved that that portion of Article Second of the Articles of Incorporation of this corporation which reads as follows, to wit:

“‘Provided that any stockholder desiring to use and using said water shall be the owner of one share of the capital stock of the company for each one-quarter acre of land, or fraction thereof, to which said water is to be delivered for use thereon, situated within the exterior limits of the above-described property and that [27] such land to which said water is to be delivered for use thereon shall first have been designated and listed by the company as susceptible to the use of said water by the company in such manner as the By-Laws of the company may determine. Mere ownership of stock in said company or of land situated within the above-described limits shall not entitle a stockholder to any water whatsoever unless he and his land shall be otherwise eligible’ be amended to read as follows:

“‘Provided that any stockholder desiring to use and using said water shall be the owner of at least one share of the capital stock of the company for each acre of land or fraction thereof, to which said water is to be delivered for use thereon, situated within the exterior limits of the above described

property and that such land to which said water is to be delivered for use thereon shall first have been designated and listed by the company as susceptible to the use of said water by the company in such manner as the By-Laws of the Company may determine. Mere ownership of stock in said company or of land situated within the above described limits shall not entitle a stockholder to any water whatever unless he and his land shall be otherwise eligible.'

"Resolved Further that the Board of Directors of this corporation hereby adopts and approves this said amendment of its Articles of Incorporation, and

"Resolved Further that the President or a Vice President and the Secretary or an Assistant Secretary of this corporation be and they are hereby authorized and directed to sign and verify by their oaths and to file a certificate in the form and manner required by Section 362b of the California Civil Code, and in general to do any and all things necessary to effect said amendment in accordance with said Section 362b."

Two: At the regular annual meeting of the shareholders of said corporation duly held at its said principal office for the transaction of business, at 2:00 o'clock p.m. on the 4th day of March, 1935, the following resolutions were duly adopted:

"Resolution Adopting and Approving  
Amendment of Articles of Incorporation

"Whereas, it is deemed by the shareholders of this corporation to be to its and to their best interests



that its Articles of Incorporation be amended to provide that any stockholder desiring to use and using water of the corporation shall be the owner of at least one share of the capital stock of the company for each acre of land or fraction thereof, to which said water is to be delivered for use thereon instead of one share for each one-quarter acre of land or fraction thereof.

“Now, Therefore, Be It Resolved that that portion of Article Second of the Articles of Incorporation of this corporation which reads as follows, to wit: [28]

“‘Provided that any stockholder desiring to use and using said water shall be the owner of one share of the capital stock of the company for each one-quarter acre of land or fraction thereof, to which said water is to be delivered for use thereon, situated within the exterior limits of the above described property and that such land to which said water is to be delivered for use thereon shall first have been designated and listed by the company as susceptible to the use of said water by the company in such manner as the By-Laws of the company may determine. Mere ownership of stock in said company or of land situated within the above described limits shall not entitle a stockholder to any water whatever, unless he and his land shall be otherwise eligible’ be amended to read as follows:

“‘Provided that any stockholder desiring to use and using said water shall be the owner of at least one share of the capital stock of the company for



each acre of land or fraction thereof, to which said water is to be delivered for use thereon, situated within the exterior limits of the above described property and that such land to which said water is to be delivered for use thereon shall first have been designated and listed by the company as susceptible to the use of said water by the company in such manner as the By-Laws of the company may determine. Mere ownership of stock in said company or of land situated within the above described limits shall not entitle a stockholder to any water whatever, unless he and his land shall be otherwise eligible.'

"Resolved Further that the shareholders of this corporation hereby adopt and approve said Amendment of its Articles of Incorporation."

Three: The foregoing amendment was adopted at said shareholders' meeting by the total vote of 1740 shares.

Four: The total number of shares of said corporation entitled to vote on or consent to the adoption of such amendment is 2003.

In Witness Whereof, the undersigned have executed this certificate of amendment this 12th day of July, 1935.

[Seal]

H. T. SINCLAIR,

Vice President of Ojai Mutual  
Water Company.

DOUGLAS E. BURNS,

Secretary of Ojai Mutual  
Water Company. [29]

State of California,  
County of Ventura—ss.

H. T. Sinclair and Douglas E. Burns, being first duly sworn, each for himself deposes and says:

That H. T. Sinclair is and was at all of the times mentioned in the foregoing Certificate of Amendment, the Vice-President of Ojai Mutual Water Company, the California corporation therein mentioned, and Douglas E. Burns is, and was at all of said times, the Secretary of said corporation, and each has read said Certificate and that the statements therein made are true of his own knowledge, and that the signatures purporting to be the signatures of said Vice-President and said Secretary thereto are the genuine signatures of said Vice-President and Secretary, respectively.

H. T. SINCLAIR,

DOUGLAS E. BURNS.

Subscribed and sworn to before me this 12th day of July, 1935.

[Seal]                      WILLIAM J. BURKE,  
Notary Public, in and for said County of Ventura,  
State of California. [30]

EXHIBIT "C"

State of California Department of State

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the annexed copy of Articles of Incorporation of the Ojai Valley Company with the certified copy of the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. I further certify that this authentication is in due form and by the proper officers.

In Witness Whereof, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 19th day of October, A.D., 1922.

[Seal]

FRANK C. JORDAN,  
Secretary of State,

By FRANK H. CORY,  
Deputy. [31]

United States of America, State of Ohio,  
Office of the Secretary of State

I, Harvey C. Smith, Secretary of State of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and cor-

rect, of the Articles of Incorporation of the Ojai Valley Company, filed in this office on the 7th day of September, A.D., 1922, and recorded in Volume 284, page 377, of the Records of Incorporations.

Witness my hand and official seal, at Columbus, this 7th day of September, A.D., 1922.

[Seal]                      HARVEY C. SMITH,  
Secretary of State. [32]

These Articles of Incorporation of  
The Ojai Valley Company

Witnesseth, That we, the undersigned all of whom are citizens of the State of Ohio, desiring to form a corporation, for profit, under Section 8728-1 et seq. of the General Code, do hereby certify:

First: The name of said corporation shall be The Ojai Valley Company.

Second: Said corporation is to be located at 920 Spitzer Building, Toledo, in Lucas County, Ohio, and its principal business there transacted.

Third: Said corporation is formed for the purpose of purchasing, improving, developing, holding and enjoying real estate in fee simple, upon ground rent or lease, and leasing, mortgaging and selling the same in such parts or parcels, improved or unimproved, and at such terms as to time and manner of payment as may be agreed upon and erecting, managing, caring for and maintaining, extending and altering buildings thereon and purchasing and selling the same.

Fourth: The total number of authorized shares which may be issued by the corporation is Forty-five Hundred shares, of which Fifteen Hundred shares shall be common stock without nominal or par value, and Three Thousand shares shall be preferred stock of the par value of \$100.00 each.

The common stock shall be divided into classes, as follows:

The common stock shall be of only one class and in the number of fifteen hundred shares and designated as the common stock, with full voting powers without restrictions or qualifications but subject to the rights and preferences of the preferred stock of [33] three thousand shares.

The terms and provisions under which the preferred stock shall be issued are as follows:

There shall be three thousand shares of preferred stock of the par value of \$100.00 each.

The holders of the preferred stock shall be entitled to receive dividends out of the surplus or net profits of the corporation when and as declared by the Board of Directors, payable on the first day of December, March, June and September, of each year, at the rate of six per cent per annum and no more, before any dividend shall be set aside or paid on the common stock. From and after the first day of September, 1923, the dividends on said preferred stock shall be cumulative so that if for any period, the same shall not be paid, the right thereto shall accumulate as against the common stock, and



all arrears so accumulated shall be paid, but without interest, before any dividend shall be paid upon the common stock.

In the event of any liquidation or dissolution or winding up, whether voluntary or involuntary, of the corporation, the holders of the preferred stock shall be entitled to be paid in full the par value of their shares, and any unpaid accrued dividends thereon, but no more, before any amount shall be paid to the holders of the common stock, and after the payment to the holders of the preferred stock of its par amount and the unpaid dividends accrued thereon, the remaining assets shall be distributed to the holders of the common stock.

The holders of preferred stock shall have full voting powers equal with the common stock and shall be entitled to notice of any meetings of stockholders of the company.

On the first day of December, 1922, and on the first day of March, June and September, 1923, and on each said days of each year thereafter, and until all the said preferred stock has been [34] retired or redeemed, all accumulated dividends on the outstanding preferred stock for all previous periods having been declared and become payable and the corporation shall have paid said accumulated dividends for such previous periods or shall have set aside from its surplus or any profits a sum sufficient therefor, and the dividends on the outstanding preferred stock shall have been declared and



become payable on said dates, the Board of Directors shall set aside all remaining surplus for the purchase or redemption of its preferred stock before any dividend shall be declared or paid upon the common stock, and this obligation shall be cumulative.

Upon at least thirty days notice given by mail to the record holders of the preferred stock to be redeemed, the Company may redeem on December 1st, 1922, and on any quarterly dividend paying date or dates thereafter, the whole or any part of the preferred stock by lot or pro rata at One Hundred per cent of the par value thereof, plus dividends accrued or in arrears, by such method as shall be provided from time to time by resolution of the Board of Directors.

Unless with the affirmative vote or written consent of the holders of all the preferred stock then outstanding, the company shall not:

(1) Dispose by sale, consolidation, merger, lease or otherwise of the property and business of the company in their entirety or so dispose of any part as at such disposition would materially reduce the security of the preferred stock, unless the proceeds of such disposition as and when received shall be simultaneously set aside and appropriated and thereafter promptly applied to the retirement of its preferred stock by purchase or redemption as herein provided, or

(2) Create any mortgage or other lien upon its

earnings or property to secure an issue of bonds or otherwise, or

(3) Create any shares of stock having priority over that [35] on a parity with the preferred stock hereby authorized, or change the par value thereof, or

(4) Create or issue or guarantee any bonds, notes, or other evidences of indebtedness.

Fifth: The amount of common capital with which the corporation will begin to carry on business is Fifteen Hundred Dollars (\$1500.00).

In Witness Whereof, we have hereunto set our hands, this 4th day of September, A.D., 1922.

JULIAN H. TYLER,

OSCAR J. SMITH,

C. W. F. KIRKLEY,

ALBERT DOMMANN,

ZELMA HARDING.

The State of Ohio,  
County of Lucas—ss.

Personally appeared before me, the undersigned, a Notary Public in and for said county, this 4th day of September, A.D., 1922, the above named Julian H. Tyler, Oscar J. Smith, C. W. F. Kirkley, Albert Dommann, and Zelma Harding, who each severally acknowledged the signing of the foregoing

articles of incorporation to be his free act and deed,  
for the uses and purposes therein mentioned.

Witness my hand and official seal on the day and  
year last aforesaid.

[Seal]                      J. B. McMAHON,  
Notary Public,  
Lucas County, Ohio. [36]

The State of Ohio,  
County of Lucas—ss.

I, W. T. Huntsman, Clerk of the Court of Com-  
mon Pleas, within and for the county aforesaid,  
do hereby certify that J. B. McMahon whose name is  
subscribed to the foregoing acknowledgment, as a  
Notary Public, was, at the date thereof, a Notary  
Public in and for said county, duly commissioned  
and qualified, and authorized as such to take such  
acknowledgment; and further, that I am well ac-  
quainted with his handwriting, and believe that the  
signature to said acknowledgment is genuine.

In Witness Whereof, I have hereunto set my hand  
and affixed the seal of said Court, at Toledo, Ohio,  
this 5th day of September, A.D., 1922.

[Seal]                      W. R. HUNTSMAN,  
Clerk,

By H. L. CHOLLETT,  
Deputy. [37]

## EXHIBIT "D"

State of California Department of State

I, Frank C. Jordan, Secretary of State of the State of California, do hereby certify that I have carefully compared the transcript, to which this certificate is attached, with the record on file in my office of which it purports to be a copy, and that the same is a full, true and correct copy thereof.

In Witness Whereof, I have hereunto set my hand and have caused the Great Seal of the State of California to be affixed hereto this 5th day of July, 1939.

[Seal]

FRANK C. JORDAN,  
Secretary of State,

CHAS. J. HAGERTY,  
Deputy. [38]

United States of America, State of Ohio,  
Office of the Secretary of State

I, Earl Griffith, Secretary of State of the State of Ohio, do hereby certify that the foregoing is an exemplified copy, carefully compared by me with the original record now in my official custody as Secretary of State, and found to be true and correct, of the Certificate of Amendment to Articles of Incorporation of the Ojai Valley Company, filed in this office on the 20th day of June, A.D., 1939,

and recorded in Volume 465, page 471, of the Records of Incorporation.

Witness my hand and official seal at Columbus, Ohio, this 23rd day of June, A.D. 1939.

[Seal]                      EARL GRIFFITH,  
Secretary of State. [39]

Certificate of Amendment to Articles  
of Incorporation of the  
Ojai Valley Company

C. J. Wilcox, President, and Frank J. Allen, Assistant Secretary, of The Ojai Valley Company, a corporation heretofore formed to buy or sell real estate by Articles of Incorporation filed in the office of the Secretary of State of the State of Ohio on the 7th day of September, 1922, do hereby certify that the following is a true copy of a resolution of amendment to Articles of Incorporation of said corporation, which was authorized by a writing, dated June 14, 1939, signed by all of the holders of shares of said corporation:

Be It Resolved, that the Articles of Incorporation of The Ojai Valley Company be amended by striking out the Article designated "Second" and inserting in lieu thereof the following:

"Second: Said corporation is to have its principal place of business in the City of Toledo, Lucas County, Ohio;"

Be It Further Resolved, that the Articles of Incorporation of said corporation be amended by



adding to the Articles designated "Third" the following paragraph:

"Notwithstanding anything herein contained, this corporation is organized and operated pursuant to the express powers and provisions contained in the Last Will and Testament of Edward Drummon Libbey, deceased (the same having been duly admitted to probate in the Probate Court of Lucas County, Ohio) for the exclusive benefit of The Toledo Museum of Art, an exempt corporation under the Revenue Laws of the United States; and no part of the net earnings of this corporation shall inure to the benefit of any private shareholder or individuals, and no part of the activities of this corporation shall be carrying on propaganda, or otherwise attempting, to influence legislation;" [40]

Be It Further Resolved, that the Articles of Incorporation of this corporation, which were filed in the office of the Secretary of State of the State of Ohio on the 7th day of September, 1922, and recorded in Volume 284, page 377 of the Records of Incorporation, be, and the same hereby are, amended so that said corporation shall have perpetual succession;

Be It Further Resolved, that a Certificate of Amendment of Articles of Incorporation, signed by the President or Vice President and the Secretary or Assistant Secretary of this corporation, be filed in the office of the Secretary of State of the State of Ohio, as required by law; and that, upon the filing



of said certificate, said Articles of Incorporation shall be amended as herein provided.

In Witness Whereof, C. J. Wilcox, President, and Frank J. Allen, Assistant Secretary of The Ojai Valley Company, have hereunto subscribed their names and caused the seal of said corporation to be affixed this 14th day of June, 1939.

[Seal]

C. J. WILCOX,  
President,

FRANK J. ALLEN,  
Assistant Secretary. [41]

#### EXHIBIT "E"

That real property containing 15.988 acres more or less in the County of Ventura, State of California, as described and set forth in that Deed to William Alfred Lucking, dated June 14, 1929, and recorded in Book 268 at page 453, Official Records of Ventura County, on July 27, 1929.

#### EXHIBIT "F"

That real property containing 33.322 acres more or less in the County of Ventura, State of California, as described and set forth in that Deed to William Alfred Lucking, dated November 13, 1940, and recorded in Book 661 at page 373, Official Records of Ventura County, on September 29, 1942. [42]

## EXHIBIT "G"

"A part of Tract Eight (8) as the same is designated and delineated upon that certain map entitled 'The Bard Subdivision of the Rancho Ojai, Tracts as surveyed by Thomas R. Bard, 1867-1870, Ventura County, Cal.,' and recorded in the office of the County Recorder of said Ventura County in Book 5 of Miscellaneous Records (Maps), at page 251½, said real property more particularly described as follows:

"Beginning at a point in the southerly line of Mountain View Road at the northeast corner of that certain parcel of land conveyed to William Alfred Lucking and described as Parcel A in deed recorded in the office of the County Recorder of said Ventura County in Book 661 of Official Records at page 373; thence from said point of beginning:

1st. North 70° 05' East 91.00 feet along the southerly line of said Mountain View Road to the northwest corner of that certain parcel of land as conveyed to the Ojai Mutual Water Company by deed recorded in the office of the County Recorder of said Ventura County in Book 379 of Official Records at page 151; thence, along the westerly, southerly and easterly lines of said lands of Ojai Mutual Water Company by the following 3 courses and distances,

2nd. South 0° 25' East 140.16 to a point; thence,

3rd. North 89° 35' East 271.50 feet to a point; thence,

4th. North  $0^{\circ} 25'$  West 236.23 feet to a point in the southerly line of said Mountain View Road; thence along same,

5th. North  $70^{\circ} 05'$  East 935.72 feet to a point in the westerly line of Fairview Road; thence along the westerly line of said Fairview Road by the following three courses and distances,

6th. South  $0^{\circ} 21'$  East 337.10 feet to a point; thence,

7th. South  $13^{\circ} 31'$  West 222.00 feet to a point; thence,

8th. South  $4^{\circ} 29'$  East 248.48 feet to a point; thence,

9th. North  $86^{\circ} 58' 30''$  West 174.78 feet to a point; thence,

10th. Southwesterly 137.97 feet along a curve concave to the left, having a central angle of  $39^{\circ} 31' 30''$  and a radius of 200.00 feet to the end of said curve; thence along a tangent to said curve,

11th. South  $53^{\circ} 30'$  West 108.00 feet to a point; thence,

12th. Westerly 89.45 feet along a curve concave to the right having a central angle of  $41^{\circ} 00'$  and a radius of 125.00 feet to the end of said curve; thence along a tangent to said curve, [43]

13th. North  $85^{\circ} 30'$  West 125.00 feet to a point; thence,

14th. Southwesterly 121.47 feet along a curve concave to the left, having a central angle of  $58^{\circ} 00'$  and a radius of 120.00 feet to the end of said curve; thence, along a tangent to said curve,

15th. South  $36^{\circ} 30'$  West 140.00 feet to a point; thence,

16th. South  $39^{\circ} 52' 30''$  West 224.35 feet to a point; thence,

17th. Southwesterly 96.43 feet along a curve concave to the left, having a central angle of  $27^{\circ} 37' 30''$  and a radius of 200.00 feet to the end of said curve; thence, along a tangent to said curve,

18th. South  $12^{\circ} 15'$  West 13.87 feet to a point; thence,

19th. Southwesterly 60.39 feet along a curve concave to the left, having a central angle of  $11^{\circ} 32'$  and a radius of 300.00 feet (the long chord of which bears South  $6^{\circ} 29'$  West 60.29 feet), to the northeast corner of Parcel B as described in said deed to William Alfred Lucking; thence, along the northerly line of said Parcel B,

20th. North  $81^{\circ} 54'$  West 216.79 feet to the northwest corner of said Parcel B; thence,

21st. North  $0^{\circ} 25'$  West 922.85 feet along the easterly line of said Parcel A to the point of beginning and containing 20.82 acres of land."

Receipt of Copy Acknowledged.

[Endorsed]: Filed October 31, 1951. [44]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS UPON  
THE GROUND OF A FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF CAN  
BE GRANTED OR IN LIEU THEREOF  
TO REQUIRE THAT THE ACTION BE  
STATED IN A SIMPLE, CONCISE AND  
DIRECT MANNER

To: William Alfred Lucking, plaintiff above named  
and William Alfred Lucking, Esq., and John-  
ston & Lucking, Esqs., his attorneys:

You and Each of You Will Please Take Notice  
that the defendants above named will on Monday,  
the 14th day of January, 1952, at the hour of 10:00  
o'clock a.m. in the court room of the above-entitled  
Court, Court Room No. 5, Federal Building, 312  
North Spring Street, in the City of Los Angeles,  
County of Los Angeles, State of California, or as  
soon thereafter as counsel can be heard, separately  
move the above-entitled Court for an order dismiss-  
ing each and every alleged cause of action set forth  
in said First Amended Complaint, to wit: the al-  
leged first, second, third, fourth, fifth, sixth and  
seventh causes of action, upon the ground that each  
and every of said alleged causes of action fail to  
state a claim upon which relief can [45] be granted  
and also upon the ground that each and every of  
said alleged causes of action do not comply with  
the requirements of Rule 23(b) 2, Federal Rules of



Civil Procedure, and that by reason thereof the same should be dismissed.

In event said alleged causes of action set forth in said First Amended Complaint are not dismissed by the Court for failure to state a claim entitling plaintiff to relief and/or for failure to comply with said Rule 23(b) 2, Federal Rules of Civil Procedure, the defendants will move the Court separately in lieu thereof for an order directing plaintiff to state each and every of said alleged causes of action in a simple, concise and direct manner.

Said motion will be made as to each defendant separately and said motion will be made upon the grounds above set forth and will be further made and based upon this notice and upon the pleadings, papers, records and files in this action.

Dated December 3, 1951.

/s/ JAMES C. HOLLINGSWORTH,  
Attorney for Defendants.

Receipt of Copy Acknowledged.

[Endorsed]: Filed December 4, 1951. [46]

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[Title of District Court and Cause.]

### ANSWER

Come now the defendants, Ojai Mutual Water Company, a corporation, and The Ojai Valley Company, a corporation, and each for itself and not for



the other defendant, and answer the first amended complaint of the plaintiff and each and every alleged cause of action therein set forth and admit, deny and allege as follows:

In Answer to Plaintiff's Alleged First Cause of Action These Answering Defendants Admit, Deny and Allege as Follows:

I.

In answer to Paragraph I thereof deny all and singular, generally and specifically, each and every allegation in said Paragraph I contained. [47]

II.

In answer to Paragraph II defendants are without any information or belief as to whether or not plaintiff is a resident of the County of Washtenaw, State of Michigan, and upon that ground deny that plaintiff is a resident of said County of Washtenaw, State of Michigan.

III.

In answer to Paragraph V, deny that plaintiff was to receive free of charge 99 shares of capital stock, fully paid, of the Ojai Mutual Water Company, but allege that said 99 shares of stock were issued to said plaintiff as a part of the consideration for the purchase of and payment for said land referred to in said Paragraph V in connection with said purchase.

IV.

In answer to Paragraph VI deny all and singular, generally and specifically, each and every allegation in said Paragraph VI contained.

## V.

In answer to Paragraph VII these answering defendants deny all and singular, generally and specifically, each and every allegation contained in Subdivision (b) of said Paragraph VII, except that plaintiff did receive Certificate No. 195 for twenty shares of the capital stock of Ojai Mutual Water Company.

## VI.

In answer to Paragraph VIII these answering defendants deny that plaintiff received no notice of said intended amendment to said articles of incorporation as required by law, or otherwise, and further deny that no such notice of said intended amendment was given as required by law.

## VII.

In answer to Paragraph IX these answering defendants [48] deny all and singular, generally and specifically, each and every allegation in said Paragraph IX contained.

## VIII.

In answer to Paragraph X these answering defendants deny all and singular, generally and specifically, each and every allegation in said Paragraph X contained.

## IX.

In answer to Paragraph XI deny generally and specifically, all and singular, each and every allegation in said Paragraph XI contained.

## X.

In answer to Paragraph XII deny all and singular, generally and specifically, each and every allegation in said Paragraph XII contained, except that it is true that there has never been a stock assessment against the holders of shares of the Ojai Mutual Water Company.

## XI.

In answer to Paragraph XIII deny all and singular, generally and specifically, each and every allegation in said Paragraph XIII contained.

## XII.

In answer to Paragraph XIV deny that there is a surplus of 1300 shares but admit that The Ojai Valley Company is entitled to vote said shares for directors of said Ojai Mutual Water Company.

## XIII.

In answer to Paragraph XV deny all and singular, generally and specifically, each and every allegation in said Paragraph XV contained.

## XIV.

In answer to Paragraph XVI deny all and singular, generally and specifically, each and every, allegation therein [49] contained, except that it is true that water levels have been below normal in the Ojai area but are now practically normal and there has never been any failure on the part of Ojai Mutual Water Company to deliver water as required by its consumers.

## XV.

In answer to Paragraph XVII deny all and singular, generally and specifically, each and every allegation in Paragraph XVII contained.

## XVI.

In answer to Paragraph XVIII deny all and singular, generally and specifically, each and every allegation in Paragraph XVIII contained.

## XVII.

In answer to Paragraph XIX deny all and singular, generally and specifically, each and every allegation in said Paragraph XIX contained, except that plaintiff requested of, and suggested to said C. J. Wilcox that he make a gift to plaintiff of said 1300 shares referred to in said Paragraph XIX and that it is true that said C. J. Wilcox gave to plaintiff no definite commitment as to what would be done by The Ojai Valley Company concerning said shares of stock and admit that said C. J. Wilcox refused to accede or submit to the requests or suggestions of plaintiff that said stock be transferred to and made a gift to plaintiff by The Ojai Valley Company.

## XVIII.

In answer to Paragraph XX, it is admitted that plaintiff has purchased upwards of \$50,000.00 of property from Mrs. E. D. Libbey personally and from The Ojai Valley Company in said Ojai Valley, but defendants are without any information or belief as to the amount of improvements thereon

and upon that ground deny that plaintiff has made substantial improvements on said real property and further [50] deny that plaintiff has any real or substantial interest or necessity for safeguarding said investments or any of them alleged in said Paragraph XX and/or that there is any necessity for the safeguarding of plaintiff's interests and/or other individual owners of said water company stock who are now grantees of land from the Ojai Valley Company and/or Libbey interests so-called.

In Answer to Plaintiff's Second and Separate Alleged Cause of Action These Answering Defendants, Each for Itself and No Other Defendant, Admit, Deny and Allege as Follows:

I.

In answer to Paragraphs I to XX of plaintiff's alleged first cause of action incorporated by reference in Paragraph I of plaintiff's second and separate alleged cause of action, these answering defendants make the same allegations, admissions and denials made by them to said paragraphs contained in plaintiff's alleged first cause of action and make them a part of this, defendants' answer to Paragraph I of plaintiff's alleged second and separate cause of action as if expressly set out at length herein.

II.

In answer to Paragraph II thereof, these answering defendants deny all and singular, generally



and specifically each and every allegation in said Paragraph II contained.

### III.

In answer to Paragraph III thereof, these answering defendants deny all and singular, generally and specifically each and every allegation in said Paragraph III contained.

### IV.

In answer to Paragraph IV thereof, these answering defendants deny all and singular, generally and specifically each and every allegation in said Paragraph IV contained. [51]

### V.

In answer to Paragraph V thereof, these answering defendants deny all and singular, generally and specifically each and every allegation in said Paragraph V contained.

### VI.

In answer to Paragraph VI thereof, these answering defendants deny all and singular, generally and specifically each and every allegation in said Paragraph VI contained.

In Answer to Plaintiff's Third and Separate Alleged Cause of Action These Answering Defendants, Each for Itself and No Other Defendant, Admit, Deny and Allege as Follows:

### I.

In answer to Paragraphs I to XX of plaintiff's alleged first cause of action incorporated by refer-

ence in Paragraph 1 of plaintiff's third and separate cause of action as if expressly set out at length the same allegations, admissions and denials made by them to said paragraphs contained in plaintiff's alleged first cause of action and make them a part of this, defendants' answer to Paragraph I of Plaintiff's alleged third and separate cause of action as if expressly set out at length herein.

## II.

In answer to Paragraphs II and III thereof these answering defendants deny all and singular, generally and specifically, each and every allegation in said Paragraphs II and III contained.

In answer to Paragraphs I to XX of [52] fendant, Admit, Deny and Allege as Follows:  
Alleged Cause of Action These Answering Defendants, Each for Itself and No Other De-

## I.

In Answer to Plaintiff's Fourth and Separate plaintiff's alleged first cause of action incorporated by reference in Paragraph I of plaintiff's fourth and separate alleged cause of action, these answering defendants make the same allegations, admissions and denials made by them to said paragraphs contained in plaintiff's alleged first cause of action and make them a part of this, defendants' answer to Paragraph I of plaintiff's alleged fourth and separate cause of action, these answering defendants make herein.

## II.

In answer to Paragraphs II, III and IV thereof these answering defendants deny all and singular, generally and specifically, each and every allegation in said Paragraphs II, III and IV contained.

In Answer to Plaintiff's Fifth and Separate Alleged Cause of Action These Answering Defendants, Each for Itself and No Other Defendant, Admit Deny and Allege as Follows:

## I.

In answer to Paragraphs I to XX of plaintiff's alleged first cause of action incorporated by reference in Paragraph I of plaintiff's fifth and separate alleged cause of action, these answering defendants make the same allegations, admissions and denials made by them to said paragraphs contained in plaintiff's alleged first cause of action and make them a part of this, defendants' answer to Paragraph I of plaintiff's alleged fifth and separate alleged cause of action as if expressly set out at length herein.

## II.

In answer to Paragraphs II, III and IV thereof these answering defendants deny all and singular, generally and specifically, each and every allegation in said paragraphs II, III and IV contained.

In Answer to Plaintiff's Sixth and Separate Alleged Cause of Action These Answering Defendants, Each for Itself and No Other Defendant, Admit, Deny and Allege as Follows:

I.

In answer to Paragraphs I to XX of plaintiff's alleged first cause of action and Paragraphs II and III of plaintiff's alleged fifth cause of action, incorporated by reference in Paragraph I of plaintiff's sixth and separate alleged cause of action, these answering defendants make the same allegations, admissions and denials made by them to said paragraphs contained in plaintiff's alleged first and fifth causes of action and make them a part of this, defendants' answer to Paragraph I of plaintiff's sixth and separate alleged cause of action as if expressly set out at length herein.

II.

In answer to Paragraphs II, III and IV thereof these answering defendants deny all and singular, generally and specifically, each and every allegation in said Paragraphs II, III and IV contained.

In Answer to Plaintiff's Seventh and Separate Alleged Cause of Action These Answering Defendants, Each for Itself and No Other Defendant, Admit, Deny and Allege as Follows:

I.

In answer to Paragraphs I to XX of plaintiff's alleged first cause of action and Paragraphs II, III

and IV of plaintiff's alleged second cause of action, and Paragraphs II and III of the alleged fourth cause of action, and Paragraphs II and III of the alleged fifth cause of action and Paragraphs II and III of the alleged sixth cause of action, incorporated by reference in Paragraph I of plaintiff's seventh and separate alleged cause of action, these answering defendants make the same allegations, admissions and denials made by them to said paragraphs contained in plaintiff's alleged first, second, fourth, fifth and sixth causes of action and make them a part of this, defendants' answer to Paragraph I of plaintiff's seventh and separate alleged cause of action as if expressly set out at length herein.

## II.

In answer to Paragraph II thereof admit that plaintiff claims that the defendant The Ojai Valley Company has no right to own, vote or sell said surplus 1300 shares of defendant, Ojai Mutual Water Company, but that said claim of plaintiff is without merit or justification and these defendants deny that there is a surplus of 1300 shares of said stock but that said 1300 shares of stock will be necessary in the future for owners of land within the exterior boundaries of the area subject to water service from Ojai Mutual Water Company, which said area is described and set forth in its articles of incorporation, a copy of which is attached to plaintiff's complaint and marked Exhibit "A."

Defendant, The Ojai Valley Company, admits that it does claim and has the right to vote said shares of stock but denies that it is threatening to



sell said shares of stock, all to the irreparable injury of plaintiff and/or the shareholders of defendant, Ojai Mutual Water Company, who are now users of said water and/or who are grantees of defendant, The Ojai Valley Company and/or the Libbey interests, so-called.

For a Further, Separate and Second Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows, to Wit:

I.

That plaintiff's alleged first, second, third, fourth, fifth, sixth and seventh causes of action set forth in plaintiff's first amended complaint, and each of them, are barred by the provisions of Subdivision 1, Section 337 of the Code [55] of Civil Procedure of the State of California.

For a Further, Separate and Third Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows, to Wit:

I.

That plaintiff's alleged first, second, third, fourth, fifth, sixth and seventh causes of action set forth in plaintiff's first amended complaint, and each of them, are barred by the provisions of Subdivision 1

of Section 339 of the Code of Civil Procedure of the State of California.

For a Further, Separate and Fourth Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows, to Wit:

I.

That plaintiff's alleged first, second, third, fourth, fifth, sixth and seventh causes of action set forth in plaintiff's first amended complaint, and each of them, are barred by the provisions of Subdivision 1 of Section 340 of the Code of Civil Procedure of the State of California.

For a Further, Separate and Fifth Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows, to Wit:

I.

That plaintiff's alleged first, second, third, fourth, fifth, sixth and seventh causes of action set forth in plaintiff's first amended complaint, and each of them, are barred by the provisions of Section 343 of the Code of Civil Procedure of the State of California.

For a Further, Separate and Sixth Defense and Answer [56] to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows:

### I.

That ever since on or about the month of February, 1928, the plaintiff has been the owner of certain shares of stock of defendant, Ojai Mutual Water Company, a corporation; that said plaintiff had transferred to him and took title to 32 shares of stock of said defendant, Ojai Mutual Water Company on or about February 23, 1928; that said plaintiff purchased said shares from one, Mrs. Florence Scott Libbey, individually, and not from either of said defendants; that on or about the 26th day of September, 1930, the said plaintiff acquired title to, and purchased 99 shares of the stock of Ojai Mutual Water Company, a corporation, from said Florence Scott Libbey, individually, and not from either of said defendants; that on or about the 12th day of June, 1945, the said plaintiff acquired title to 20 shares of the stock of Ojai Mutual Water Company, a corporation, by purchasing and acquiring the same from the defendant, The Ojai Valley Company, a corporation.

### II.

That the purchase of said 32 shares of stock of Ojai Mutual Water Company above referred to and the purchase of said 99 shares of stock of Ojai Mu-

tual Water Company above referred to, were transferred, sold and issued to said plaintiff by reason of the fact that plaintiff had purchased from said Florence Scott Libbey individually, 15.988 acres of land and 33.32 acres of land, all of which said land was at the time of the purchase of the same by said plaintiff, included within the exterior boundaries of the lands described in the Articles of Incorporation of Ojai Mutual Water Company, a [57] corporation. That the total acreage of said lands so purchased by the said plaintiff in connection with the said stock in Ojai Mutual Water Company, acquired by plaintiff as hereinabove set forth, contained approximately 49.208 acres of land, more or less, and plaintiff acquired, by reason of the purchase of said lands as hereinabove alleged, a total of only 131 shares of the capital stock of the defendant, Ojai Mutual Water Company, a corporation, and the said plaintiff has at all times since acquiring said shares of stock in Ojai Mutual Water Company, a corporation, received water service from defendant, Ojai Mutual Water Company, a corporation, to said lands so purchased by plaintiff as hereinabove alleged, under, and by virtue of the bylaws, rules and regulations relating to the furnishing and supplying of water by Ojai Mutual Water Company, a corporation, to plaintiff and other owners of shares of stock in said mutual water company.

### III.

That plaintiff further purchased and acquired 20 shares of stock of Ojai Mutual Water Company, a

corporation, on or about the 12th day of June, 1945, from defendant, The Ojai Valley Company, a corporation; that said shares of stock referred to in this paragraph, so acquired by plaintiff, were sold and issued to plaintiff by the defendant, The Ojai Valley Company, by reason of the purchase by plaintiff of 20.92 acres of land lying within the exterior boundaries of the lands described and set forth in the Articles of Incorporation of defendant, Ojai Mutual Water Company, a corporation, and to which the owner thereof would be entitled to receive water service from said defendant, Ojai Mutual Water Company, a corporation, in accordance with its Articles of Incorporation, bylaws, rules and regulations pertaining to the furnishing by it of water to qualified land owners owning lands within the exterior [58] boundaries of the lands described in the Articles of Incorporation of Ojai Mutual Water Company, a copy of which is set up and referred to as Exhibit "A" to plaintiff's first amended complaint.

That the issuance of said 20 shares of stock to said plaintiff was transferred to, paid for, and accepted by plaintiff, from, defendant, The Ojai Valley Company, on a basis of one share of stock per acre of land so purchased and acquired by plaintiff within the exterior boundaries of the land described in the Articles of Incorporation of defendant, Ojai Mutual Water Company, and to which plaintiff would be entitled to receive water from it in pursuance of its Articles of Incorporation, bylaws and



rules and regulations respecting the furnishing of water and the said plaintiff accepted said shares of stock on a basis of one share per acre as herein alleged with full knowledge of the fact that the articles of incorporation of defendant, Ojai Mutual Water Company, had been amended on the 4th day of March, 1935, providing that any stockholder desiring to use water from the Ojai Mutual Water Company shall be the owner of at least one share of the capital stock of said Ojai Mutual Water Company for each acre of land or fraction thereof to which said water was to be delivered or used thereon furnished within the exterior limits of the real property described and set forth in the original articles of incorporation of the defendant, Ojai Mutual Water Company, a corporation.

#### IV.

That at the time of the amendment to the articles of incorporation of defendant, Ojai Mutual Water Company, the plaintiff was the owner of approximately 49 acres of land, more or less and of 131 shares of the capital stock of defendant, Ojai Mutual Water Company, and at the time, and for [59] several years prior to said amendment of said articles of incorporation, had been receiving water service from defendant, Ojai Mutual Water Company, in accordance with its articles of incorporation, bylaws and rules and regulations pertaining to the delivery of water to holders of its stock and subsequent to said amendment of said articles of incorporation the said plaintiff has continued to re-

ceive water from defendant, Ojai Mutual Water Company, a corporation, for said 49 acres of land, more or less, up until the present time.

#### V.

That the plaintiff, ever since on or about the 12th day of June, 1945, by reason of the purchase of said 20.82 acres of land as hereinabove alleged, has been receiving and accepting water service from said defendant, Ojai Mutual Water Company, a corporation, in accordance with said amendment to its said articles of incorporation, and without protest, hindrance or objection on the part of plaintiff.

#### VI.

That plaintiff at all times herein mentioned, has acquiesced in, consented to and accepted water service from defendant, Ojai Mutual Water Company, a corporation, in accordance with its original and amended articles of incorporation and in accordance with its bylaws, rules and regulations respecting the furnishing of water by it to its shareholders; that plaintiff herein has at all times known and been aware of the fact that there is contained within the exterior boundaries of the real property described in the original articles of incorporation of defendant, Ojai Mutual Water Company, approximately 2675 acres of land, all of which said land is qualified and entitled to receive water service from Ojai Mutual Water Company, a corporation, under its original and amended articles of incorporation and the

bylaws, [60] rules and regulations adopted by defendant, Ojai Mutual Water Company relative to the furnishing of water service to qualified owners of land within said area.

## VII.

That plaintiff has at all times herein mentioned known and been aware of the fact that there has been a heavy increase in population of the said area subject to water service above referred to and that from time to time various and divers persons, firms and corporations have purchased land within said area subject to water service and that from time to time said persons, firms and corporations have acquired shares of stock in Ojai Mutual Water Company by virtue of their purchase of lands within said area subject to water service, exclusive of lands within said area owned or held by defendants, or either of them; that plaintiff, at all times herein mentioned, has known and been aware of the fact that shares of stock of Ojai Mutual Water Company have been sold to and acquired by individuals, firms and corporations owning land within said service area, which said lands were not acquired from defendant, The Ojai Valley Company, or its grantees, and that said individuals, firms and corporations further acquiring said lands within said service area have been accepting and receiving water service from said defendant, Ojai Mutual Water Company, pursuant to the provisions of its original and amended articles of incorporation as herein referred to and set forth and that said individuals, firms and cor-

porations, have relied upon the continued existence of said water service so being received by them and in reliance thereon have constructed valuable and extensive improvements, agricultural, commercial, industrial and otherwise, within said service area; that with full knowledge of said facts as in this paragraph alleged plaintiff has never protested, objected to, or complained [61] against, the doing of any of said acts by the said defendants, or either of them, in the sale of any of said stock of defendant, Ojai Mutual Water Company, or in the furnishing of said water service as herein set forth, from on or about the 11th day of January, 1928, to on or about the date of the filing of the original complaint in said action, to wit: June 12, 1951, a period of approximately twenty-three years.

### VIII.

That furthermore, the said plaintiff at all times herein has known and been aware of the fact that by reason of the progressive and continued growth in population within the service area above referred to, the defendant, Ojai Mutual Water Company, has been compelled to and has expended large sums of money from time to time in order to construct, maintain, and repair the necessary facilities required by it under its original and amended articles of incorporation in order to furnish said water service to the qualified persons, firms and corporations within said service area; that in so doing the said plaintiff has never at any time objected, protested or in any way sought to prevent the con-



tinued water service within said service area and the expenditures necessary to be made by said defendant, Ojai Mutual Water Company, in order to maintain and keep said water service in effect, until the filing of his complaint in this action. That at all times herein mentioned plaintiff has been aware of the fact, or by the exercise of reasonable or ordinary diligence could have acquainted himself with the fact, that it was necessary for said original articles of incorporation of said defendant, Ojai Mutual Water Company, to be amended as hereinabove alleged, by reason of the continued growth existing within said service area in order that additional consumers of water within said service area could be supplied by said water company with water [62] needed by additional and qualified consumers within said area. That the said articles of incorporation of said Ojai Mutual Water Company were amended for the purpose of enabling it to extend its service and facilities within said service area in order to promote the expansion and growth of the said service area described and set forth in the original articles of incorporation of said water company, all of which has at all times been known to plaintiff and all of which plaintiff never complained of or objected to until the filing of his original complaint in this action, to wit: On or about the 12th day of June, 1951.

## IX.

That by reason of the foregoing facts and matters hereinabove alleged in defendants' further, sepa-



rate, and sixth defense and answer to plaintiff's amended complaint, plaintiff has been guilty of laches in asserting any right, claim or interest of any kind or nature that he may now have or claim to have against any, or either, of said defendants to prevent or restrain them in any way whatsoever from selling or disposing of said shares of stock now held or owned by defendants, or either of them, in said Ojai Mutual Water Company, a corporation, or to question, claim, or in anywise attempt to have said amendment to said articles of incorporation of said water company declared void, inoperative, ineffective, or otherwise, or to have defendant, The Ojai Valley Company, enjoined, restrained or otherwise prevented from selling or transferring any shares of stock owned or held by it in said defendant, Ojai Mutual Water Company; or that said shares of stock shall be limited to 200 acres, or any other acreage now owned by defendant, The Ojai Valley Company, within the area embraced in said water service area as hereinabove set forth and described; or that defendant, The Ojai Valley [63] Company, be in anywise restrained or enjoined from voting more than one share of stock in said mutual water company to unsold land now alleged to be owned by the defendant, The Ojai Valley Company, not exceeding 200 acres; or that defendant, The Ojai Valley Company, be enjoined or restrained from voting more than one share of stock of Ojai Mutual Water Company for every acre of land owned by the defendant, The Ojai Valley

Company, within said service area; or that said defendant, The Ojai Valley Company, deliver up 1300 shares, or any other number of shares of stock of defendant, Ojai Mutual Water Company, to the officers of said defendant mutual water company for retirement of said shares, or otherwise; or that the defendant mutual water company deliver up for cancellation 1300 shares, or any other shares of the stock of said defendant, Ojai Mutual Water Company; or that defendant, The Ojai Valley Company be ordered to distribute 1300 shares of the capital stock of said mutual water company pro rata on an acreage basis to present holders of record of shares of the capital stock of said Ojai Mutual Water Company, and which owners of said shares are now owners of land granted to them by defendant, The Ojai Valley Company, or the so-called Libbey interests, and which are within said service area; or that it be adjudged that the record holders of 1300 shares of stock of Ojai Mutual Water Company, or any other shares therein, have no right to make any profit of any kind or nature of or from said 1300 shares, or any other shares in said mutual water company; or that the court take an accounting of any moneys owing for said Ojai Mutual Water Company plant and if a balance in favor of the Ojai Valley Company be found that its payment be provided for in some equitable manner, which leaves control of said Ojai Mutual Water Company in the grantees of defendant, The Ojai Valley Company; or that in the alternative that a declaratory judgment be entered adjudging and [64] adjudicat-

ing the respective rights and duties of plaintiff and defendants in the premises and/or declaring and/or determining that defendant, The Ojai Valley Company is not entitled to vote, sell or make a profit of any kind or nature of or from any surplus 1300 shares, or any other shares of said mutual water company.

For a Further, Separate and Seventh Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows:

I.

These answering defendants repeat and reallege each and every allegation contained in Paragraphs I, II, III, IV, V, VI, VII, and VIII of defendant's further, separate and sixth defense and answer to plaintiff's first amended complaint and make them a part of this, defendants' further, separate and seventh defense and answer to plaintiff's first amended complaint and each and every alleged cause of action therein set forth, as if expressly set out at length herein.

II.

That by reason of the facts and matters aforesaid alleged, the plaintiff is estopped from claiming or asserting any right on plaintiff's part, or on the part of any shareholder or stockholder of said defendant, Ojai Mutual Water Company, as against the said defendants, or either of them, by reason of

anything alleged and set forth in plaintiff's first amended complaint and in each and every alleged cause of action therein set forth or for any relief prayed for by plaintiff in the prayer of his first amended complaint, or otherwise.

For a Further, Separate and Eighth Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These [65] Answering Defendants Allege as Follows:

#### I.

These answering defendants repeat and reallege each and every allegation contained in Paragraphs I, II, III, IV, V, VI, VII and VIII of defendants' further, separate and sixth defense and answer to plaintiff's first amended complaint and make them a part of this, defendants' further, separate and eighth defense and answer to plaintiff's first amended complaint and each and every alleged cause of action therein set forth, as if expressly set out at length herein.

#### II.

That by reason of the facts and matters aforesaid alleged plaintiff has waived any right on his part, to claim or assert any right on his part, or on the part of any stockholder or shareholder of said defendant, Ojai Mutual Water Company, as against the said defendants, or either of them, by reason of anything alleged and set forth in plaintiff's first amended complaint and in each and every alleged



cause of action therein set forth, or for any relief prayed for by plaintiff in the prayer of his first amended complaint, or otherwise.

For a Further, Separate and Ninth Defense and Answer to Plaintiff's First Amended Complaint and Each and Every Alleged Cause of Action Therein Set Forth, These Answering Defendants Allege as Follows:

### I.

These answering defendants repeat and reallege each and every allegation contained in Paragraphs I, II, III, IV, V, VI, VII and VIII of defendants' further, separate and sixth defense and answer to plaintiff's first amended complaint and make them a part of this, defendants' further, separate and ninth defense and answer to plaintiff's first amended complaint and each and every alleged cause of action therein set forth, [66] as if expressly set out at length herein.

### II.

That by reason of the facts and matters aforesaid alleged plaintiff has acquiesced in and consented to the various acts and things done by these answering defendants as herein alleged and set forth and is now prevented from claiming or asserting any right on his part, or on the part of any shareholder or stockholder of said Ojai Mutual Water Company, as against the said defendants, or either of them, by reason of anything alleged and set forth in plaintiff's first amended complaint, and in each



and every alleged cause of action therein set forth, or for any relief prayed for by plaintiff in the prayer of his first amended complaint, or otherwise.

Wherefore, these answering defendants demand judgment:

1. That plaintiff take nothing by reason of his first amended complaint and each and every alleged cause of action therein set forth;

2. That it be adjudged and decreed that plaintiff's complaint and each and every cause of action therein set forth, is barred by the provisions of Subdivision 1 of Section 337, Code of Civil Procedure; Subdivision 1 of Section 339, Code of Civil Procedure; Subdivision 1 of Section 340, Code of Civil Procedure, and Section 343, Code of Civil Procedure:

3. That it be ordered, adjudged and decreed that plaintiff has been guilty of laches and is not entitled to any relief prayed for in his said first amended complaint, or in any alleged cause of action therein set forth;

4. That it be ordered, adjudged and decreed that plaintiff is estopped from claiming or asserting any right on plaintiff's part, or on the part of any shareholder or stockholder of said defendant, Ojai Mutual Water Company, as against the said defendants, or either of them, by reason [67] of anything alleged and set forth in plaintiff's first amended complaint and in each and every alleged cause of action therein set forth;

5. That it be further ordered, adjudged and decreed that plaintiff has acquiesced and consented to all of the acts on the part of said defendants, or either of them, complained of by plaintiff, and that he has waived any right to complain of the same as against defendants, or either of them;

6. For defendants' costs of suit incurred herein and for such other and further relief as the Court may deem just and equitable in the premises.

/s/ JAMES C. HOLLINGSWORTH,  
Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed March 21, 1952. [68]

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[Title of District Court and Cause.]

REQUEST FOR ADMISSION, UNDER RULE  
36, RULES OF CIVIL PROCEDURE FOR  
THE DISTRICT COURTS OF THE  
UNITED STATES

Plaintiff William Alfred Lucking requests defendants, Ojai Mutual Water Company, a corporation, and The Ojai Valley Company, a corporation, within 15 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, copies of which are exhibited with this request or attached

as exhibits to plaintiff's First Amended Complaint, is genuine.

Exhibit "A," Articles of Incorporation of Ojai Mutual Water Company, being Exhibit "A" attached to plaintiff's First Amended Complaint and being part of the record of this action.

Exhibit "B," Certificate of Amendment of Articles of Incorporation of Ojai Mutual Water Company, a corporation, being [69] Exhibit "B" attached to plaintiff's First Amended Complaint and being a part of the record of the above-entitled action. (Plaintiff herein expressly reserving his right to challenge the validity of said amendment and the regularity of passage and adoption thereof.)

Exhibit "C," Articles of Incorporation of The Ojai Valley Company, being Exhibit "C" attached to plaintiff's First Amended Complaint and being a part of the record of the above-entitled action.

Exhibit "D," Certificate of Amendment to Articles of Incorporation of The Ojai Valley Company, being Exhibit "D" attached to plaintiff's First Amended Complaint and being part of the record of the above-entitled action.

Exhibit "E," letter from plaintiff William Alfred Lucking to Mr. C. J. Wilcox, President, Ojai Mutual Water Company, dated September 29, 1948, a copy of which is attached hereto and marked Exhibit "E."

Exhibit "F," letter from C. J. Wilcox, on The Ojai Valley Company letterhead, addressed to Mr. William A. Lucking in Detroit, Michigan, dated October 4, 1948, a copy of which is attached hereto and marked Exhibit "F."

Exhibit "G," letter from plaintiff William Alfred Lucking to Mr. C. J. Wilcox, Ojai Valley Company, Toledo, Ohio, dated May 24, 1949, a copy of which is attached hereto and marked Exhibit "G."

Exhibit "H," letter from C. J. Wilcox, on The Ojai Valley Company letterhead, to Mr. William A. Lucking, Detroit, Michigan, dated May 27, 1949, a copy of which is attached hereto and marked Exhibit "H."

Exhibit "I," letter from plaintiff William Alfred Lucking to Mr. C. J. Wilcox, Toledo, Ohio, dated April 27, 1950, a copy of which is attached hereto and marked Exhibit "I." [70]

Exhibit "J," letter from C. J. Wilcox, on The Ojai Valley Company letterhead, to Mr. William Alfred Lucking, Detroit, Michigan, dated May 3, 1950, a copy of which is attached hereto and marked Exhibit "J."

Exhibit "K," letter from C. J. Wilcox, on The Ojai Valley Company letterhead, to Mr. William Alfred Lucking, Detroit, Michigan, dated May 24, 1950, a copy of which is attached hereto and marked Exhibit "K."

2. That each of the following statements is true:

(1) The question which is the subject of this action is one of common and general interest to all of the holders of the capital stock of Ojai Mutual Water Company.

(2) Common questions of law and fact are involved affecting the rights of stockholders of Ojai Mutual Water Company, in subject action.

(3) Holders of stock of Ojai Mutual Water Company are so numerous that it is impracticable to bring them all before the Court in subject action.

(4) In negotiations leading up to the purchase of the twenty acres, more or less, east of Del Norte Road, in 1945, plaintiff requested that The Ojai Valley Company transfer to him four shares of stock in Ojai Mutual Water Company per acre.

(5) Mr. C. J. Wilcox refused plaintiff's request, as aforesaid, on the ground that said shares would make the purchase price of said twenty acres, more or less, on entirely too low a basis.

(6) Plaintiff was not given notice of the intended Amendment to the Articles of Incorporation of Ojai Mutual Water Company, Exhibit "B" of plaintiff's First Amended Complaint.

(7) No notice of said intended Amendment (Exhibit "B") was given as required by law.

(8) From 1922 through 1948, The Ojai Valley Company and [71] Mr. and Mrs. Edward D. Libbey sold approximately 300 acres of land for residence purposes, in the Ojai Valley.



(9) Purchasers of the aforesaid 300 acres of land erected residences and other improvements on said land in a total fair market value of over one and one-half million dollars.

(10) The entire cost of all property and facilities of Ojai Mutual Water Company has been paid for from water dues collected by Ojai Mutual Water Company from actual users of Ojai Mutual Water Company water.

(11) There has never been any water used on lands within the water district by virtue of ownership of at least 1400 issued and outstanding shares of Ojai Mutual Water Company, which said 1400 shares or more are now held by The Ojai Valley Company.

(12) No owner of said more than 1400 shares, as aforesaid, has ever paid any water dues in connection with any of said more than 1400 shares.

(13) The Ojai Valley Company now owns less than 200 acres of land eligible to receive water from Ojai Mutual Water Company.

(14) Ojai Mutual Water Company facilities constitute the only adequate and sufficient source of water to shareholders of Ojai Mutual Water Company who are grantees of The Ojai Valley Company or Mr. or Mrs. Edward D. Libbey.

(15) An adequate and sufficient supply of water is necessary to maintain the homes and lands and the value thereof of the grantees of The Ojai Valley Company and Mr. and Mrs. Edward D. Libbey.

(16) The water supply in the Ojai Valley generally is critically short.

(17) The water supply in the basin from which Ojai Mutual Water Company pumps its water is critically short. [72]

(18) On or about June 1, 1951, the static water levels in Ojai Mutual Water Company wells were approximately 100% lower than they were three years prior thereto.

(19) On or about June 1, 1951, the drawdown levels in Ojai Mutual Water Company wells were approximately 100% lower than they were three years prior thereto.

(20) There was not sufficient water available to Ojai Mutual Water Company distribution system to permit the extension of said system without diminishing the amounts of water available to users of water of Ojai Mutual Water Company during the month of September, 1951.

(21) Ojai Mutual Water Company, through its Board of Directors, declared it advisable and necessary to attempt to drill a new well because of the water shortage, during the year 1951.

(22) The entire cost of all property and facilities of Ojai Mutual Water Company, as of date of filing plaintiff's First Amended Complaint, did not exceed \$100,000.00, or approximately \$50.00 per share.

(23) The Ojai Valley Company has offered to

sell substantially all of its more than 1400 shares of Ojai Mutual Water Company stock.

(24) The Ojai Valley Company has sold shares of stock of Ojai Mutual Water Company at a price of \$75.00 per share.

(25) The Ojai Valley Company has sold shares of stock of Ojai Mutual Water Company at a price of \$100.00 per share.

(26) Plaintiff requested of Mr. C. J. Wilcox that approximately 1250 surplus shares of Ojai Mutual Water Company stock be cancelled or placed in trust for the benefit of owners of land who were presently shareholders and users of said water, said demand having been made during the year 1950.

(27) Plaintiff at that time told Mr. C. J. Wilcox that [73] serious injury and loss would result to the present stockholders who were users of water if said Ojai Mutual Water Company stock were sold or transferred.

(28) Plaintiff requested of Mr. C. J. Wilcox, during the year 1950, that said surplus of 1250 shares more or less be purchased and retired into Ojai Mutual Water Company's treasury, upon proper terms.

(29) Mr. Edward D. Libbey was the promoter of both of defendant corporations.

(30) The Ojai Valley Company was, until the death of Mr. Edward D. Libbey, wholly owned by Mr. Libbey and his immediate family.

(31) The Ojai Valley Company, after Mr. Edward D. Libbey's death, was and is now wholly owned by the trustees appointed under Mr. Libbey's Will and/or by Mr. Libbey's immediate family.

(32) None of the present individual users of Ojai Mutual Water Company water is an overlying owner of said water.

(33) Water distributed by Ojai Mutual Water Company is imported upwards of two miles from the so-called Ojai Valley Basin, an underground source, to distributees of said water.

(34) There are numerous users of water from said Ojai Valley Basin, other than Ojai Mutual Water Company and its distributees.

(35) Said Ojai Valley Basin is now seriously depleted and overdrawn.

(36) There was insufficient water in said Ojai Valley Basin for any material extension of water use, over withdrawals from said Basin during the month of September, 1951.

(37) This plaintiff and present shareholders of Ojai Mutual Water Company who are using Ojai Mutual Water Company waters have made actual beneficial use of said waters.

(38) All of Ojai Mutual Water Company's properties and [74] facilities have been paid for by the actual users of said water.

(39) During the summer of 1951, Ojai Mutual Water Company imposed some system of water

rationing, by request or otherwise, upon at least one user of Ojai Mutual Water Company water.

(40) The Ojai Valley Company has purchased no additional land in the Ojai Valley since 1930.

(41) The Ojai Valley Company, by its agents, officers, and employees, has represented to prospective purchasers of Arbolada Tract land that there was a good and adequate water supply available to said land from Ojai Mutual Water Company.

(42) Such representations constitute an established and frequently used "sales talk" to such prospective purchasers.

Dated: July 8, 1952.

WILLIAM ALFRED LUCKING,  
and JOHNSTON & LUCKING,  
Attorneys for Plaintiff.

By /s/ WM. A. LUCKING, JR. [75]

EXHIBIT "E"

September 29, 1948.

Mr. C. J. Wilcox,  
President, Ojai Mutual Water Company,  
Care Estate of Edward D. Libbey, Deceased,  
Nicholas Building,  
Toledo, Ohio.

Dear Mr. Wilcox:

Unless you advise otherwise, I am assuming that you have written Mr. Harmon about my intention of



locking the gate on Del Norte Road as I discussed it with you last Friday.

Regarding the affairs generally of the Ojai Mutual Water Company, and being its second largest stockholder, I would greatly appreciate information and your advice on the following:

1st—Detailed description and boundaries of the original water district, so-called, referred to in the Charter and By-Laws and in the minutes of the first Directors meetings. I would like to have a copy of the plan or map therein referred to, for my files here.

2nd—The balance remaining unpaid of the cost of the Water Company facilities and property which Mr. Libbey, in his lifetime and his representatives later on, advanced to the Company for which, as I understand our talk, the Trustees now are holding as security, approximately 1509 shares out of the total of 2003 shares now issued and outstanding.

In view of the serious fire loss in Ojai, recently, I was greatly reassured by your statements to us Friday, September 17th, that the Trustees still held these 1509 shares undisposed of in any way and for the purposes of the Water Company and the service by it to the original territory contemplated by its organization.

It does not seem to me advisable under any circumstances that the original Water District or area be enlarged in any way or extent, or any obligation entered into by the Company for water outside

thereof, or to the City of Ojai, or any adjoining community. It is my understanding from our recent talk that no such arrangement exists of any kind with any person; except possibly the limited connection made with an Ojai City fire main on its main street and which arrangement is a verbal one and is revocable by our Water Company at any time.

On the subject of the unpaid balance of advancements made by Mr. Libbey and his representatives to the Company for construction, etc., if you wish me to, I will be glad to come to Toledo and go over the figures, and I would greatly appreciate a further conference with you at an early date, on the question of ultimate disposition of the 'Trustees' present stockholdings in the Mutual Company, since I understand practically all the land in the original Water District of the Company has now been sold by the Trustees. [76]

It is particularly my desire and present position that under no circumstances should control of the Water Company leave, in the future, the present owners and grantees of the properties covered by the original Water District—all of whom now hold only about 500 shares out of the total outstanding of 2003 shares—as of the date of my examination last Spring of the Company's records in Ojai.

Kindly let me hear from you on the foregoing at your earliest convenience and oblige,

Very truly yours,

WILLIAM ALFRED LUCKING.

## EXHIBIT "F"

The Ojai Valley Company  
715 Nicholas Building  
Toledo 4, Ohio

October 4, 1948.

Mr. William A. Lucking,  
1407 Ford Building,  
Detroit 26, Michigan.

Dear Mr. Lucking:

Your favor of September 29th was duly received.

I have talked to Mr. Harmon about locking the gate on Del Norte Road and he agrees that it should be done, and I will instruct Jimmy, our man, to withdraw his objection. I understand you are going to give him a key to the gate.

There's nothing I can add to what I said to you personally a few days ago regarding the Water Company at Ojai. I have no map of the district; all those papers are in Ojai, in the original minute book. The Water Company has no debt either to the Libbey Estate or the Ojai Valley Company, it having repaid The Ojai Valley Company all moneys borrowed for improvements in the system. The stock held by The Ojai Valley Company is not held as security for any debt owed to it by the Water Company but is the remaining part of the stock originally purchased by Mr. Libbey at the time of the organization of the Water Company and most of it will be needed to transfer to future purchasers

of The Ojai Valley Company properties remaining unsold at Ojai. So far as I know, there has never been any intention of enlarging the original water district and there is no arrangement with the local water company to furnish water for distribution by that company.

With my best regards, I remain

Yours very truly,

C. J. WILCOX.

CJW-FJA [78]

EXHIBIT "G"

May 24, 1949.

Mr. C. J. Wilcox,  
Ojai Valley Company,  
715 Nicholas Building,  
Toledo 4, Ohio.

In Re Ojai Mutual Water Company, etc.

Dear Mr. Wilcox:

Recently, I have reviewed my file on the above subject and our correspondence of some months ago from which it appears that:

(a) I received in your letter of November 8th last a map of the Company's Water District and note your explanatory statement that "There has never been any stock sold or water delivered out-

side of this District. The North line is the forest in which the fire recently occurred.”

(b) In your letter of October 4th last, you stated, as follows:

“There’s nothing I can add to what I said to you personally a few days ago regarding the Water Company at Ojai. I have no map of the district; all those papers are at Ojai in the original minute book. The Water Company has no debt either to the Libbey Estate or The Ojai Valley Company, having repaid The Ojai Valley Company all moneys borrowed for improvements in the system. The stock held by The Ojai Valley Company is not held as security for any debt owed to it by the Water Company but is the remaining part of the stock originally purchased by Mr. Libbey at the time of the organization of the Water Company and most of it will be needed to transfer to future purchasers of The Ojai Valley Company properties remaining unsold at Ojai. So far as I know, there has never been any intention of enlarging the original water district and there is no arrangement with the local water company to furnish water for distribution by that Company.”

(c) The original incorporation or organization papers of the Water Company contemplated and provided that land in the District should be entitled to receive water from the company on the



basis of one share of the Company's stock for each one-quarter acre of land or fraction for which the water was to be delivered for use thereon.

Apparently some years later this share per acre basis was attempted to be altered so as to provide a modified basis of one share for each acre of land in the District, etc.

I am calling the foregoing to your attention in view of my recollection that as of about March 1st of last year, the [79] Company's records showed a total of 2003 authorized shares of which the Ojai Valley Company holds of record 1480 shares and all the purchasers of land in the District a total of 494 shares of which I am the largest holder, namely 151 shares; the Ojai Hotel Company, 100 shares; Sidney Gest, 12 shares, and others in less amounts.

It appears to me from my general information and our talks of last fall that the largest and best part of all the land formerly owned by the Libbey interests, including the Ojai Valley Company within the Water District has now been sold to various individual purchasers, who have erected improvements thereon of considerable total value.

I am unable in view of the foregoing facts to understand why the Ojai Valley Company should now hold nearly three times as much of the Water Company's stock as do all the other individual owners of land with their valuable improvements thereon now have standing in their respective names.

In other words, it seems to me perfectly apparent that the individual owners of the Water stock now totalling some 494 shares should have a much greater interest in the Water Company and its future direction and control than is now seemingly represented by the different holdings of shares outstanding.

This is a matter in which I, and my family, are very much interested and I would appreciate your giving careful consideration to the foregoing and I would like in the next week or ten days to come to Toledo and talk with you about the future of the Water Company, at your convenience.

I will phone you ahead of time so as to come when you can give me some time.

Sincerely yours,

WILLIAM ALFRED LUCKING.

WAL/T [80]

### EXHIBIT "H"

The Ojai Valley Company

May 27, 1949.

Mr. William A. Lucking,  
Detroit 26, Michigan.

Dear Mr. Lucking:

I have your letter of May 25, and cannot say anything further to you regarding matters referred

to in your letter. We are doing everything possible to supply water during the summer, which is predicted to be a very dry, trying time, and we are devoting our every attention to assuring the furnishing of water to the consumers.

If you come to Toledo there is nothing more I can say to you than I have advised you previously. I will be glad to see you if you wish to come, but fear I cannot be very helpful to you.

With my best regards, I remain

Yours very truly,

C. J. WILCOX. [81]

EXHIBIT "I"

April 27, 1950.

Mr. C. J. Wilcox,  
715 Nicholas Building,  
Toledo, Ohio.

Dear Mr. Wilcox:

I want to thank you for the very enjoyable luncheon with you yesterday and our visit in the afternoon.

I was especially glad to have your assurance that the Directors of the Ojai Mutual Water Company had a definite and settled policy of not enlarging the present use of the water facilities of the Com-

pany beyond the present stockholders and, of course, such others as might purchase the remaining one hundred eighty odd unsold acres now owned by the Ojai Valley Company.

As I discussed with you yesterday, this policy simply means that approximately 550 shares are now owned by actual owners of residence property in the Arbolada and west hills so-called, and residents on the east side of Foothills Road and the north side of Fairview Road, such as Mrs. Sinclair. There are, of course, a few other owners outside of that approximate square mile, such as Mr. Boyle, The Ojai Valley School, the present owners of the Foothills Hotel property, Mr. George Caldwell, Villanova Prep School and Krotona, etc.

Of the above I was informed recently that Mr. Boyle and Krotona have ceased using any of our Mutual Company's water.

If we assume, as we talked yesterday, that one share is devoted to each unsold acre now owned by The Ojai Valley Company, it results that approximately 750 shares are all that are necessary under the present charter of the Water Company to serve the present land holdings and the holdings of the ultimate purchasers from the Ojai Valley Company of the unsold approximate 180 acres, etc. As I suggested yesterday this would leave a balance of about 1250 shares of the original holdings of the Ojai Valley Company out of a total of 2003 shares—for which there is no necessary use by any other land than the above noted.

In that connection, would you consider that shares held by present non-users, such as Boyle and Krontona might be purchased and retired into the Company's treasury—in addition to the retirement of the above-noted 1250 shares, upon proper terms?

I would appreciate your view whether it might not be advisable at this time for this settled policy of the Water Company's Board not to sell any shares to any other possible users (other than the purchasers of the above-noted 180 acres unsold and belonging to the Ojai Valley Company) to be set forth in a resolution of the [82] Board at an early meeting.

On the other subject discussed with you, I will greatly appreciate a further talk with you later on, after you have had an opportunity to confer with your associates on your Board of Trustees, etc.

Again thanking you for a most enjoyable visit and talk, I am

Sincerely yours,

WILLIAM ALFRED LUCKING.

WAL/T [83]



## EXHIBIT "J"

The Ojai Valley Company  
715 Nicholas Building  
Toledo 4, Ohio

May 3, 1950.

Mr. William Alfred Lucking,  
1407 Ford Building,  
Detroit 26, Michigan.

Dear Mr. Lucking:

I have received your letter of April 27th.

As I will have to undertake considerable investigation and study, concerning the matters referred to in your letter, including conversations with, and information to, my associates and directors, it will be some little time before I can make a reply to yours.

With my best regards, I remain

Yours very truly,

C. J. WILCOX.

CJW:rc [84]

EXHIBIT "K"

The Ojai Valley Company  
715 Nicholas Building  
Toledo 4, Ohio

May 24, 1950.

Mr. William Alfred Lucking,  
1407 Ford Building,  
Detroit 26, Michigan.

Dear Mr. Lucking:

With further reference to your inquiry regarding The Ojai Valley Company and The Ojai Mutual Water Company, I am not disposed to make any recommendations to our Board at this time with respect to the points covered by your letter of April 27th.

Under the present Bylaws of the Water Company, the minimum ownership requirement for the use of water is at least one share for each acre or fraction thereof. Should the unsold land ultimately be platted into lots smaller than one acre and a share of stock sold with the lot, a greater number of shares would be required to fulfill the contracts of sale. It is thus impossible to determine at this time just how many shares will be required for disposition with the lot sales. For this and for other reasons, it is my opinion that there is no occasion to consider any changes.

Should the remaining unsold lots and lands be disposed of in a bulk transaction, the stock of the

Water Company owned by The Ojai Valley Company would be included in the transaction.

As you know, Mr. Harmon has an exclusive contract for the sale of the properties, and I find that this contract applied to a bulk sale. Any negotiations, therefore, should be conducted with Mr. Harmon. It has been his custom to come East for the summer months, and I expect he will be here about the middle of June. If you care to talk about the matter further with Mr. Harmon, I suggest you write to him and I am sure he will be glad to arrange an appointment at your convenience.

Very truly yours,

THE OJAI VALLEY COMPANY,

C. J. WILCOX,  
President.

CJW:rc

Receipt of copy acknowledged.

[Endorsed]: Filed July 10, 1952. [85]

[Title of District Court and Cause.]

AMENDED REPLY TO REQUEST FOR ADMISSIONS UNDER RULE 36, RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES AND OBJECTION TO PARTS OF SAID REQUEST, TOGETHER WITH NOTICE OF HEARING OF OBJECTIONS

Come Now the defendants above named and file their amended reply to plaintiff's request to make admissions for the purposes of said action, subject to all objections to admissibility which may be interposed at the trial. Defendants admit the genuineness and due execution of all the documents listed as Exhibits "A," "B," "C" and "D" on pages 1 and 2 of plaintiff's said request, but as to Exhibits "E," "F," "G," "H," "I," "J," and "K" listed and set forth on pages 2 and 3 of said request, defendants admit the genuineness of said Exhibits E, F, G, H, I, J and K, but deny that said Exhibits E, F, G, H, I, J and K, or any of them, are relevant, competent or material on the issues to be tried in said matter.

That said defendants, and each of them, hereby object to the said request of plaintiff for admissions on the part of said defendants, or either of them, as to the truth of any [86] of the statements commencing on line 9, page 3 of said request of plaintiff under subdivisions 1 to 42 inclusive, or either of

them, on the following grounds as hereinafter listed and set forth:

“(1) The question which is the subject of this action is one of common and general interest to all of the holders of the capital stock of Ojai Mutual Water Company.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(2) Common questions of law and fact are involved affecting the rights of stockholders of Ojai Mutual Water Company, in subject action.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(3) Holders of stock of Ojai Mutual Water Company are so numerous that it is impracticable to bring them all before the Court in subject action.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.



“(4) In negotiations leading up to the purchase of the twenty acres, more or less, east of Del Norte Road, in 1945, plaintiff requested that The Ojai Valley Company transfer to him four shares of stock in Ojai Mutual Water Company per acre.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(5) Mr. C. J. Wilcox refused plaintiff's request, as aforesaid, on the ground that said shares would make the purchase price of said twenty acres, more or less, on entirely too low a basis.”

Defendants object to said request for admission on the [87] ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(6) Plaintiff was not given notice of the intended Amendment to the Articles of Incorporation of Ojai Mutual Water Company, Exhibit 'B' of plaintiff's First Amended Complaint.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(7) No notice of said intended Amendment Exhibit ‘B’ was given as required by law.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(8) From 1922 through 1948, The Ojai Valley Company and Mr. and Mrs. Edward D. Libbey sold approximately 300 acres of land for residence purposes, in the Ojai Valley.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(9) Purchasers of the aforesaid 300 acres of land erected residences and other improvements on said land in a total fair market value of over one and one-half million dollars.”

Defendants have no information or belief as to the above statement and upon that ground deny that said statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(10) The entire cost of all property and facilities of Ojai Mutual Water Company has been paid for from water dues collected by

Ojai Mutual Water Company from actual users of Ojai Mutual Water Company water.” [88]

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(11) There has never been any water used on lands within the water district by virtue of ownership of at least 1400 issued and outstanding shares of Ojai Mutual Water Company, which said 1400 shares or more are now held by The Ojai Valley Company.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(12) No owner of said more than 1400 shares, as aforesaid, has ever paid any water dues in connection with any of said more than 1400 shares.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(13) The Ojai Valley Company now owns less than 200 acres of land eligible to receive water from Ojai Mutual Water Company.”

Defendants admit that the above statement is true but object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(14) Ojai Mutual Water Company facilities constitute the only adequate and sufficient source of water to shareholders of Ojai Mutual Water Company who are grantees of The Ojai Valley Company or Mr. or Mrs. Edward D. Libbey.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(15) An adequate and sufficient supply of water is necessary to maintain the homes and lands and the value thereof of the grantees of The Ojai Valley Company and Mr. and Mrs. Edward D. Libbey.” [89]

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(16) The water supply in the Ojai Valley generally is critically short.”

Defendants deny that the above statement is true and object to said request for admission on the

ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(17) The water supply in the basin from which Ojai Mutual Water Company pumps its water is critically short.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(18) On or about June 1, 1951, the static water levels in Ojai Mutual Water Company wells were approximately 100% lower than they were three years prior thereto.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(19) On or about June 1, 1951, the draw-down levels in Ojai Mutual Water Company wells were approximately 100% lower than they were three years prior thereto.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.



“(20) There was not sufficient water available to Ojai Mutual Water Company distribution system to permit the extension of said system without diminishing the amounts of water available to users of water of Ojai Mutual Water Company during the month of September, 1951.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within [90] the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(21) Ojai Mutual Water Company, through its Board of Directors, declared it advisable and necessary to attempt to drill a new well because of the water shortage, during the year 1951.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(22) The entire cost of all property and facilities of Ojai Mutual Water Company, as of date of filing plaintiff's First Amended Complaint, did not exceed \$100,000.00, or approximately \$50.00 per share.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36

and is not pertinent, relevant or germane to the issues of said action.

“(23) The Ojai Valley Company has offered to sell substantially all of its more than 1400 shares of Ojai Mutual Water Company stock.”

Defendants admit that Ojai Valley Company has offered to sell substantially or all its stock but only in connection with the sale of all its lands and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(24) The Ojai Valley Company has sold shares of stock of Ojai Mutual Water Company at a price of \$75.00 per share.”

Defendants have sold 3 shares of stock at \$75.00 per share and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(25) The Ojai Valley Company has sold shares of stock of Ojai Mutual Water Company at a price of \$100.00 per share.”

Defendants have sold shares of stock at a price of \$100.00 per share and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action. [91]

“(26) Plaintiff requested of Mr. C. J. Wilcox that approximately 1250 surplus shares of Ojai Mutual Water Company stock be cancelled or placed in trust for the benefit of owners of land who were presently shareholders and users of said water, said demand having been made during the year 1950.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(27) Plaintiff at that time told Mr. C. J. Wilcox that serious injury and loss would result to the present stockholders who were users of water if said Ojai Mutual Water Company stock were sold or transferred.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(28) Plaintiff requested of Mr. C. J. Wilcox, during the year 1950, that said surplus of 1250 shares more or less be purchased and retired into Ojai Mutual Water Company's treasury, upon proper terms.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(29) Mr. Edward D. Libbey was the promoter of both of defendant corporations.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(30) The Ojai Valley Company was, until the death of Mr. Edward D. Libbey, wholly owned by Mr. Libbey and his immediate family.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(31) The Ojai Valley Company, after Mr. Edward D. Libbey's death, was and is now wholly owned by the trustees appointed under Mr. Libbey's Will and/or by Mr. Libbey's immediate family.” [92]

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(32) None of the present individual users of Ojai Mutual Water Company water is an overlying owner of said water.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36

and is not pertinent, relevant or germane to the issues of said action.

“(33) Water distributed by Ojai Mutual Water Company is imported upwards of two miles from the so-called Ojai Valley Basin, an underground source, to distributees of said water.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(34) There are numerous users of water from said Ojai Valley Basin, other than Ojai Mutual Water Company and its distributees.”

Defendants deny the existence of any Ojai Valley Basin; admit that there are other water users in Ojai Valley other than owners of Ojai Mutual Water Company stock and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(35) Said Ojai Valley Basin is now seriously depleted and overdrawn.”

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(36) There was insufficient water in said



Ojai Valley Basin for any material extension of water use, over withdrawals from said Basin during the month of September, 1951."

Defendants deny that the above statement is true and [93] object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

"(37) This plaintiff and present shareholders of Ojai Mutual Water Company who are using Ojai Mutual Water Company waters have made actual beneficial use of said waters."

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

"(38) All of Ojai Mutual Water Company's properties and facilities have been paid for by the actual users of said water."

Defendants deny that the above statement is true and object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

"(39) During the summer of 1951, Ojai Mutual Water Company imposed some system of water rationing, by request or otherwise, upon at least one user of Ojai Mutual Water Company water."

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(40) The Ojai Valley Company has purchased no additional land in the Ojai Valley since 1930.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

“(41) The Ojai Valley Company, by its agents, officers, and employees, has represented to prospective purchasers of Arbolada Tract land that there was a good and adequate water supply available to said land from Ojai Mutual Water Company.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action. [94]

“(42) Such representations constitute an established and frequently used ‘sales talk’ to such prospective purchasers.”

Defendants object to said request for admission on the ground that it is not within the purview of Rule 36 and is not pertinent, relevant or germane to the issues of said action.

That said request on the part of plaintiff for admissions by said defendants, or either of them, of the matters and things set forth under subdivisions 1 to 42, inclusive, hereinabove specifically set forth, are improper under Rule 36 of the Rules of Civil Procedure for the District Courts of the United States and furthermore that the same are incompetent, irrelevant and immaterial.

Notice Is Further Given that defendants will on the 4th day of September, 1952, at the hour of 10:00 o'clock a.m. in the courtroom of the above-entitled court, or as soon thereafter as counsel can be heard, object to plaintiff's request for admissions under said Rule 36 above referred to on the ground that the requests commencing on Line 9, page 3, under subdivisions (1) to (42), inclusive, except as otherwise denied or admitted, are irrelevant and not within the purview of Rule 36 and upon the records and files of said action; the same being the time and place heretofore fixed by the above-entitled Court for a pre-trial conference or hearing in said matter, and for the inspection of documents under Rule 34 of the above-entitled court.

Dated August 18, 1952.

/s/ JAMES C. HOLLINGSWORTH,  
Attorney for Defendants.

Duly Verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 23, 1952. [95]

[Title of District Court and Cause.]

MINUTES OF THE COURT—MARCH 10, 1954

Hon. Ernest A. Tolin, District Judge.

Proceedings:

It Is Ordered that this case is now Consolidated for trial with Case No. 15,804-T Civil, and said trial is set for July 6, 1954, 10 a.m.

It Is Further Ordered that trial date of June 1, 1954, heretofore fixed be, and hereby is now vacated.

EDMUND L. SMITH,  
Clerk. [97]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 26th day of May, 1955, before the Court sitting without a jury, William Alfred Lucking and Johnston & Lucking, Esqs., appearing for plaintiff and James C. Hollingsworth, Esq., appearing for defendants and the Court having tried only the issue raised by the pleadings in said cause as to the validity of the amendment to the Articles of Incorporation of the Ojai Mutual Water Company on the 4th day of March, 1935, respecting the giving of notice required by law in order to amend said Articles of Incorporation, and evidence both

oral and documentary having been introduced and the cause submitted for decision, the Court now makes its Findings of Fact as follows: [98]

### Findings of Fact

#### I.

The Court finds that the giving of notice of a regular meeting of said Ojai Mutual Water Company to amend said Articles of Incorporation was required and that said notice was given and that the said Ojai Mutual Water Company performed the conditions necessary to the adoption of said amendment to the Articles of Incorporation on the 4th day of March, 1935.

### Conclusions of Law

As conclusions of law from the foregoing Findings of Fact, the Court concludes that the said amendment to the Articles of Incorporation of said Ojai Mutual Water Company on the 4th day of March, 1935, is valid in respect to the giving of notice required by law for the amendment of said Articles of Incorporation.

Let judgment be entered in accordance herewith.

Dated this 28th day of July, 1955.

/s/ ERNEST A. TOLIN,  
Judge.

Receipt of Copy acknowledged. [99]



State of California,  
County of Ventura—ss.

James C. Hollingsworth being duly sworn, deposes and says: That he personally delivered two copies of the attached Findings of Fact and Conclusions of Law to William A. Lucking, Jr., one of the attorneys for plaintiff on the 3rd day of June, 1955, at 2:30 p.m.; that said William A. Lucking, Jr., stated in substance at said time that he would not approve said Findings of Fact and Conclusions of Law as to form; that in event he decided in the future to so approve the same that he would forward a copy of said Findings of Fact and Conclusions of Law to the Court with his signature endorsed thereon. Further deponent sayeth not.

/s/ JAMES C. HOLLINGSWORTH.

Subscribed and sworn to before me this 3rd day of June, 1955.

[Seal]      /s/ DOMINICA STEWART,  
Notary Public in and for Said  
County and State.

My Commission Expires Feb. 9, 1959.

Lodged June 15, 1955.

[Endorsed]: Filed July 28, 1955. [100]

In the District Court of the United States for the  
Southern District of California, Central Di-  
vision

No. 13197-T

WILLIAM ALFRED LUCKING,

Plaintiff,

vs.

OJAI MUTUAL WATER COMPANY, a Corpo-  
ration and THE OJAI VALLEY COMPANY,  
a Corporation,

Defendants.

JUDGMENT RELATIVE TO AMENDMENT TO  
ARTICLES OF INCORPORATION OF  
OJAI MUTUAL WATER COMPANY

The above-entitled cause came on regularly for trial on the 26th day of May, 1955, before the Court sitting without a jury, William Alfred Lucking and Johnston & Lucking, Esqs., appearing for plaintiff and James C. Hollingsworth, Esq., appearing for defendants, and evidence oral and documentary having been introduced and offered by the respective parties on the issue raised by the pleadings relative to the giving of notice required by law for the amendment to the Articles of Incorporation of Ojai Mutual Water Company on the 4th day of March, 1935, and the Court being fully advised and having signed and filed herein written Findings of Fact and Conclusions of Law, and having directed that judgment be entered accordingly,

It Is Hereby Ordered, Adjudged and Decreed that the amendment to the Articles of Incorporation

of said Ojai Mutual [101] Water Company on the 4th day of March, 1935, is valid in respect to the giving of notice required by law for the amendment of said Articles of Incorporation, and that the Ojai Mutual Water Company performed the conditions necessary to the adoption of said amendment respecting the giving of notice thereof; that defendant, Ojai Mutual Water Company be allowed its costs herein fixed in the amount of \$23.96.

Dated this 28th day of July, 1955.

/s/ ERNEST A. TOLIN,  
Judge.

Receipt of Copy acknowledged. [102]

State of California,  
County of Ventura—ss.

James C. Hollingsworth being duly sworn, deposes and says: That he personally delivered two copies of the attached Judgment Relating to Amendment to Articles of Incorporation of Ojai Mutual Water Company to William A. Lucking, Jr., one of the attorneys for plaintiff on the 3rd day of June, 1955, at 2:30 p.m.; that said William A. Lucking, Jr., stated in substance at said time that he would not approve said Judgment as to form; that in event he decided in the future to so approve the same that he would forward a copy of said Judgment to the Court with his signature endorsed thereon. Further deponent sayeth not.

/s/ JAMES C. HOLLINGSWORTH.

Subscribed and sworn to before me this 3rd day of June, 1955.

[Seal]      /s/ DOMINICA STEWART,  
Notary Public in and for Said  
County and State.

My Commission Expires Feb. 9, 1959.

Lodged June 15, 1955.

[Endorsed]: Filed July 28, 1955.

Docketed and entered July 28, 1955. [103]

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In the District Court of the United States for the  
Southern District of California, Central Di-  
vision

No. 13197-T

WILLIAM ALFRED LUCKING,  
Plaintiff,

vs.

OJAI MUTUAL WATER COMPANY, a Corpo-  
ration and THE OJAI VALLEY COMPANY,  
a Corporation,  
Defendants.

JUDGMENT BARRING THE TAKING OF  
FURTHER EVIDENCE AND DISMISSAL  
OF COMPLAINT

The above-entitled cause came on regularly for  
trial on the 26th day of May, 1955, before the Court

sitting without a jury, William Alfred Lucking and Johnston & Lucking, Esqs., appearing for plaintiff and James C. Hollingsworth, Esq., appearing for defendants and the Court having tried the issue raised by the pleadings respecting the giving of notice of the amendment of the Articles of Incorporation of the Ojai Mutual Water Company on the 4th day of March, 1935, and having rendered judgment thereon and counsel for defendants having moved the Court to bar the taking of further evidence in said cause and for dismissal of the complaint upon the ground that the complaint does not state a claim upon which relief can be granted and upon the further ground that the same is not a class action as pleaded,

It Is Therefore Ordered, Adjudged and Decreed that the [104] said motions of said defendants be and the same are hereby granted and the further taking of evidence in said cause is barred and the said cause hereby dismissed.

Dated this 28th day of July, 1955.

/s/ ERNEST A. TOLIN,  
Judge.

Receipt of Copy acknowledged. [105]

State of California,  
County of Ventura—ss.

James C. Hollingsworth being duly sworn, deposes and says: That he personally delivered two



copies of the attached Judgment Barring the Taking of Further Evidence and Dismissal of Complaint to William A. Lucking, Jr., one of the attorneys for plaintiff, on the 3rd day of June, 1955, at 2:30 p.m.; that said William A. Lucking, Jr., stated in substance at said time that he would not approve said Judgment as to form; that in event he decided in the future to so approve the same that he would forward a copy of said Judgment to the Court with his signature endorsed thereon. Further deponent sayeth not.

/s/ JAMES C. HOLLINGSWORTH.

Subscribed and sworn to before me this 3rd day of June, 1955.

[Seal]      /s/ DOMINICA STEWART,  
Notary Public in and for Said  
County and State.

My Commission Expires Feb. 9, 1959.

Lodged June 15, 1955.

[Endorsed]: Filed July 28, 1955.

Docketed and entered July 28, 1955. [106]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To: Ojai Mutual Water Company and The Ojai Valley Company, the Defendant Corporations, and to James C. Hollingsworth, Esq., Their Attorney:

Notice Is Hereby Given that William Alfred Lucking, the plaintiff above named, for himself and for the other class plaintiffs, hereby appeals to United States Court of Appeals for the Ninth Circuit from the final Judgment Barring the Taking of Further Evidence and Dismissal of Complaint entered in this action on July 28, 1955, and from the final Judgment Relative to Amendment to Articles of Incorporation of Ojai Mutual Water Company entered in this action on July 28, 1955.

Dated: August 23, 1955.

WILLIAM ALFRED LUCKING,  
and JOHNSTON & LUCKING,

By /s/ WM. A. LUCKING, JR.,  
Attorneys for Above Named  
Plaintiff.

[Endorsed]: Filed August 24, 1955. [107]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT WILLIAM ALFRED LUCKING INTENDS TO RELY ON APPEAL

Appellant William Alfred Lucking, for himself and for the other class plaintiffs herein, hereby makes the following statement of points upon which he intends to rely on the appeal taken in the above-entitled matter:

1. The Court erred in its Findings of Fact, to the effect that notice of a regular meeting of Ojai Mutual Water Company to amend its Articles of Incorporation was given and that the said Ojai Mutual Water Company performed the conditions necessary to the adoption of said amendment to the Articles of Incorporation on the 4th day of March, 1935, in that each and all are contrary to the evidence, not supported by sufficient or any evidence, and contrary to law.

2. The Court erred in its Conclusions of Law, to the effect that said Amendment to the Articles of Incorporation of said Ojai Mutual Water Company on the 4th day of March, 1935, is valid in respect to the giving of the notice required by law for the amendment of said Articles of Incorporation, in that each and all are contrary to law, contrary to the evidence, and not supported by the Findings of Fact or any evidence. [113]

3. The Court erred in making its Judgment that the Amendment to the Articles of Incorporation of

said Ojai Mutual Water Company on the 4th day of March, 1935, is valid in respect to the giving of notice required by law for the amendment of said Articles of Incorporation, and that Ojai Mutual Water Company performed the conditions necessary to the adoption of said amendment respecting the giving of notice thereof, in that said Judgment is contrary to law, contrary to the evidence, and not supported by the Findings of Fact or any evidence.

4. The Court erred in granting defendants' motions, and in its Judgment Barring the Taking of Further Evidence and Dismissal of Complaint insofar as it applies to the First, Second, Fourth, Fifth, Sixth and Seventh Causes of Action in the First Amended Complaint in the above-entitled cause, in that the granting of said motions and rendering judgment thereon, are contrary to law, contrary to the evidence, and not supported by the Findings of Fact or any evidence.

5. The Court erred in granting defendants' motions, and in its Judgment Barring the Taking of Further Evidence and Dismissal of Complaint insofar as it applies to the First, Second, Fourth, Fifth, Sixth and Seventh Causes of Action in the First Amended Complaint in the above-entitled cause on the ground that the same is not a class action as pleaded, in that if the action was not a properly pleaded class action, the Court sitting in equity failed to treat as surplusage the allegations pertaining to class actions, and failed to render full and complete relief to plaintiff William

Alfred Lucking in his individual right, which failure is contrary to law and contrary to the evidence.

6. The Court erred in granting defendants' motions, and in its Judgment Barring the Taking of Further Evidence and Dismissal of Complaint insofar as it applies to the First, Second, Fourth, Fifth, Sixth and Seventh Causes of Action in the First Amended Complaint in the above-entitled cause upon the ground that the complaint does not state a claim upon which relief can be granted, in that such Judgment is contrary to law and contrary to the facts properly pleaded and adduced at the trial.

Dated at Ventura, California, this 25th day of October, 1955.

WILLIAM ALFRED LUCKING,  
JOHNSTON & LUCKING,

By /s/ WM. A. LUCKING, JR.,  
Attorneys for Appellant and  
Plaintiffs.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 27, 1955. [114]

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[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of Cali-



fornia, do hereby certify that the foregoing pages numbered 1 to 117, inclusive, contain the original

First Amended Complaint;  
Notice of Motion to Dismiss, etc;  
Answer;  
Request for Admission;  
Amended Reply to Request for Admission;  
Findings of Fact & Conclusions of Law;  
Judgment Relative to Amendment, etc.;  
Judgment Barring the Taking for Further Evidence, etc.;  
Notice of Appeal;  
Affidavit for Order Extending Time to Docket Record on Appeal;  
Designation of Contents of Record on Appeal;  
Statement of Points Upon Which Appellant Intends to Rely;  
Defendants' Designation of Additional Portions of Record;

and a full, true and correct copy of the Minute of the Court had on March 10, 1954, which together with the Original copy of Reporter's Transcript (2 vols.) of Proceedings for January 14, 1952, & September 4, 1952, all in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, the sum of which has been paid by appellant.

Witness my hand and the seal of said District Court, this 15th day of November, 1955.

[Seal]                      JOHN A. CHILDRESS,  
Clerk.

By /s/ CHARLES E. JONES,  
Deputy.

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[Endorsed]: No. 14945. United States Court of Appeals for the Ninth Circuit. William Alfred Lucking, Appellant, vs. Ojai Mutual Water Company, a Corporation and The Ojai Valley Company, a Corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: November 16, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 14945

WILLIAM ALFRED LUCKING,  
Appellant,  
vs.

OJAI MUTUAL WATER COMPANY, a Corporation,  
and THE OJAI VALLEY COMPANY,  
a Corporation,  
Appellees.

ADOPTION OF STATEMENT OF POINTS  
AND DESIGNATION OF RECORD, PUR-  
SUANT TO RULE 17

Appellant above named hereby adopts the Statement of Points Upon Which Appellant William Alfred Lucking Intends to Rely on Appeal, commencing on Page 113 of the original certified record, and the Designation of Contents of Record on Appeal, commencing on Page 110 of the original certified record, heretofore filed with the Clerk of the United States District Court for the Southern District of California, Central Division, as compliance with Rule 17 of the Rules of Practice of United States Court of Appeals for the Ninth Circuit.

Dated: January 10, 1956.

WILLIAM ALFRED LUCKING,  
JOHNSTON & LUCKING,  
Attorneys for Appellant.

By /s/ WM. A. LUCKING, JR.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 12, 1956.

[Title of Court of Appeals and Cause.]

STIPULATION FOR CONSOLIDATION OF  
ACTIONS FOR PRINTING, BRIEFING  
AND HEARING

The above-entitled action and another action of the same title having been brought in the District Court of the United States for the Southern District of California, Central Division, and being Nos. 13197 and 15804, respectively, on the Clerk's register of actions of said District Court, and Nos. 14945 and 14946, respectively, on the Clerk's register of actions in the above-entitled Court, and said actions having been consolidated for trial in said District Court and having been tried therein on May 26, 1955, and the exhibits, testimony and other evidence adduced at the trial of said actions and the reporter's transcripts thereof being in many instances identical, and common questions of law and of fact being involved in said actions, and the nominal parties to said actions being the same, and both actions having been appealed to the above-entitled Court.

It Is Therefore Stipulated by and between appellant and appellees in the above-entitled appeals, through their respective counsel, that the above-entitled cases on appeal may be consolidated for printing, briefing and hearing so that duplication of printing may be eliminated, expenses reduced, and time of Court and counsel may be saved.

Dated: February 17, 1956.

WILLIAM ALFRED LUCKING,  
JOHNSTON & LUCKING,

By /s/ WM. A. LUCKING,  
Attorneys for Appellant.

/s/ JAMES C. HOLLINGSWORTH,  
Attorney for Appellees.

So Ordered:

/s/ ALBERT LEE STEPHENS,  
Acting Chief Judge, U. S. Court of Appeals for  
the Ninth Circuit.

[Endorsed]: Filed March 9, 1956.